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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

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RICHARD L. SOLYOM, *Appellant,*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Appellee.*

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**On Appeal from the Court of Special Appeals of Maryland**

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## JURISDICTIONAL STATEMENT

## *and* APPENDIX

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## QUESTION PRESENTED

Is Appellant Richard L. Solyom entitled to a new trial to adduce evidence in support of his claim that, under Article I, § 8, cls. 2 and 5, and Article I, § 10, cl. 1 of the United States Constitution, and the Fifth and Fourteenth Amendments thereto, Maryland code art. 66D, § 5-101(a), and *Real Property*, §§ 12-103, 12-104(a), 12-105(b), and 12-108(a), and Rules U3, U19g, and U19h of the Maryland Rules of Procedure are invalid, in so far as they (i) permit a jury in an eminent-domain action to calculate the value of condemnation-damages in a medium other than gold and silver coin, and (ii) license Appellee Maryland-National Capital Park and Planning Commission to tender anything other than such coin in payment of those damages?

## PARTIES TO THIS PROCEEDING

The caption of this case contains the names of all parties to the proceeding in the Court of Special Appeals of Maryland, the judgment of which Appellant requests this Court to review.

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RICHARD L. SOLYOM, *Appellant,*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Appellee.*

**On Appeal from the Court of Special Appeals of Maryland**

## JURISDICTIONAL STATEMENT

Richard L. Solyom respectfully appeals from the judgment of the Court of Special Appeals of Maryland in *Solyom* v. *The Maryland-National Capital Park and Planning Commission,* No. 377 (8 December 1982).

## OPINIONS BELOW

The opinion of the Court of Special Appeals of which Appellant seeks review is unreported, and reprinted in the Appendix (A.) hereto at 3a. The order of the Court of Appeals of Maryland, denying review of the decision of the Court of Special Appeals, is unreported, and reprinted in A. at 21a. The opinion of the Circuit Court for Montgomery County, Maryland, which the Court of Special Appeals affirmed, is unreported, and reprinted in A. at 11a.

## JURISDICTION

This is an appeal from a decision of the Court of Special Appeals, which held that Appellant has no right to adduce evidence in an eminent-domain proceeding to support his claim that the Maryland statutes and rules of court under color of which Appellee condemned his property [1] violate various provisions of the United States Constitution.[2] The Court of Special Appeals filed its decision on 8 December 1982.[3] The Court of Appeals denied Appellant's petition for a writ of certiorari on 24 March 1983.[4] Appellant filed his notice of appeal in the Court of Special Appeals on 17 May 1983.[5] This Court has appellate jurisdiction under 28 U.S.C. §§ 1257(2) and 2101 (1976), and under Rules 10 and 12 of the Rules of this Court.

## STATUTES, COURT RULES, AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves—

1. the validity of (a) Maryland Code art. 66D, § 5-101(a) and *Real Property,* §§ 12-103, 12-104(a), 12-105(b), and 12-108(a); and (b) Rules U3, U19g, and U19h of the Maryland Rules of Procedure;

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[1] Maryland Code art. 66D, § 5-101(a), and *Real Property,* §§ 12-103, 12-104(a), 12-105(b), and 12-108(a), and Rules U3, U19g, and U19h of the Maryland Rules of Procedure. *See* A. at 125a-26a.

[2] U.S. Const. art. I, § 8, cls. 2 and 5; art. I, § 10, cl. 1; amends. V and XIV. *See* A. at 126a-27a.

[3] A. at 3a.

[4] *Id.* at 21a.

[5] *Id.* at 29a.

2. the interpretation, application, and validity of various statutes of the national government, including 12 U.S.C. § 411 and 31 U.S.C. § 392 (1976);[6] and

3. the application to these statutory provisions and rules of Article I, § 8, cls. 2 and 5, and Article I, § 10, cl. 1 of the United States Constitution, and of the Fifth and Fourteenth Amendments thereto.[7]

## STATEMENT OF THE FACTS

Under its delegated statutory power of eminent domain,[8] Appellee Maryland-National Capital Park and Planning Commission petitioned the Circuit Court for Montgomery County, Maryland, to expropriate an interest in land Appellant Richard L. Solyom owned in that county.[9] Solyom counterclaimed for a declaratory judgment that condemnation-damages be paid in gold and silver coin.[10]

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[6] Because neither the Court of Special Appeals nor the Circuit Court addressed the constitutionality of the Federal Reserve System or Federal Reserve Notes, Appellant cannot identify with certainty all of the provisions of national law on which Appellee may rely. Appellant does assert, however, that any such provision is unconstitutional, as applied in the context of this case, under Article I, § 8, cls. 2 and 5 of the United States Constitution, and the Fifth Amendment thereto.

[7] The pertinent text of these statutes, court rules, and constitutional provisions appears in A. at 125a-27a.

[8] Maryland Code art. 66D, § 5-101(a), *in* A. at 125a.

[9] Petition for Condemnation, Docket Entry No. 1 (30 Oct. 1980). The full docket of this litigation in the Circuit Court appears in A. at 35a-44a.

[10] Pleas and Counterclaim of Defendant Richard L. Solyom to Petition for Condemnation, Docket Entries Nos. 10 and 11 (29 Dec. 1980).

The Commission moved to strike and dismiss the counterclaim, and for summary judgment thereon, on the ground that various national statutes license the States to pay eminent-domain judgments with legal-tender Federal Reserve Notes not redeemable in gold or silver coin.[11] Solyom responded that: (i) Article I, § 10, cl. 1 of the Constitution absolutely disables the States and their instrumentalities from tendering any thing but gold and silver coin in payment of their debts; (ii) as a matter of economic fact under the Due Process Clause of the Fourteenth Amendment, payment of a condemnation-judgment in irredeemable paper currency constitutes incremental confiscation, not the transfer of fair market value ("just compensation"); and (iii) the statutes allowing the emission of irredeemable, legal-tender Federal Reserve Notes are themselves unconstitutional, as applied in an eminent-domain proceeding, under Article I, § 8, cls. 2 and 5 of the Constitution, and under the Due Process and Just Compensation Clauses of the Fifth Amendment.[12] Dis-

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[11] Motion Ne Recipiatur or to Strike, Docket Entry No. 12 (12 Feb. 1981); Plaintiff's Motion for Summary Judgment in its Favor on Defendant's Counter Claim, Docket Entry No. 25 (30 Apr. 1981); Plaintiff's Motion to Dismiss Defendant's Counter Claim for Lack of Jurisdiction, Docket Entry No. 26 (30 Apr. 1981).

[12] Defendant Richard L. Solyom's Reply to Plaintiff Maryland-National Capital Park and Planning Commission's Motion Ne Recipiatur or to Strike Defendant's Counterclaim for Declaratory Judgment, Docket Entries Nos. 14 and 15 (13 Feb. 1981); Defendant Richard L. Solyom's Reply to Plaintiff Maryland-National Capital Park and Planning Commission's Motion to Dismiss Defendant's Counterclaim for Lack of Jurisdiction, and Motion for Summary Judgment in its Favor on Defendant's Counterclaim, Docket Entries Nos. 28, 29, 30, and 31 (21 May 1981); Defendant Richard L. Solyom's Supplemental Memorandum of Law, Docket Entry No. 39 (9 Jul. 1981).

missing the counterclaim, the Circuit Court ruled Article I, § 10, cl. 1 inapplicable to payment of the Commission's debts with irredeemable paper currency of the national government; said nothing at all about whether such payment would afford Solyom "just compensation" for the land the Commission expropriated; and abjured jurisdiction to adjudicate the constitutionality of irredeemable, legal-tender Federal Reserve Notes.[13]

Solyom then moved the Circuit Court to rescind this order, and permit him to adduce testimony at trial from expert-witnesses in monetary history and theory, economics, and banking and financial practices to establish a factual predicate for all his constitutional arguments.[14] The Circuit Court denied this motion on the basis of its earlier ruling.[15]

At trial, Solyom moved to instruct the jury that the damages were payable in gold and silver coin only. But the Circuit Court orally denied his motion.[16] Solyom moved once again for the Court to set aside its order dismissing his counterclaim, and to permit him to call expert-witnesses of his own, and to cross-examine the Commission's witness, on the issue of payment in gold and silver coin. The Court denied this motion,[17] but

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[13] A. at 11a-14a.

[14] Defendant and Counter-Plaintiff Richard L. Solyom's Motion to Rescind Order of 28 July 1981, and Permit the Taking of Expert Testimony, Docket Entry No. 45 (16 Nov. 1981).

[15] Docket Entry No. 53 (19 Nov. 1981).

[16] Transcript of Hearing of 30 November 1981 (T-1), at 3-7; Transcript of Hearing of 1 December 1981 (T-2), at 63-64, 69.

[17] Docket Entry No. 60 (1 Dec. 1981).

allowed him to proffer affidavits of his expert-witnesses outlining the subject-matters of their proposed testimony.[18] Solyom then moved for permission to cross-examine the Commission's appraiser on whether she had determined as a matter of economic fact that payment in irredeemable paper currency would transfer fair market value to him.[19] The Court orally denied this motion.[20] At the close of the Commission's case, Solyom moved for a directed verdict, on the ground that the Commission had adduced no evidence of what medium of payment it intended to tender, or of whether that medium would transfer fair market value to him. The Court denied this motion, too.[21]

Finally, Solyom objected to the Court's denial of his proposed jury-instruction that damages be specified in gold or silver coin. The Court orally overruled this objection.[22] The jury then returned a verdict reciting "damages * * * in the sum of one thousand four hundred sixty two Dollars ($1,462)", without specifying

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[18] Defendant's Exhibits Nos. 1 (Affidavit of Dr. John A Sparks), 2 (Affidavit of Philip D. Bradley), 3 (Affidavit of Dr. John A. Sparks), and 4 (Affidavit of Dr. Elgin Groseclose). *See* Docket Entries Nos. 58 and 63 (1 Dec. 1981). The Court received Defendant's Exhibit No. 7 (Affidavit of John Exter) after trial. *See* Docket Entries Nos. 70, 71, and 72 (13 Jan. 1982), and T-1, at 5-7. *See* A. at 47a-116a.

[19] Defendant and Counter Plaintiff Richard L. Solyom's Motion to Permit the Examination of Certain Witnesses at Trial (1 Dec. 1981), *received as* Defendant's Exhibit No. 5, Docket Entry No. 63 (1 Dec. 1981). *See* A. at 119a-22a.

[20] T-2, at 33-34.

[21] Docket Entry No. 61 (1 Dec. 1981). *See* T-2, at 53-56.

[22] T-2, at 69.

whether these "Dollars" were payable in gold or silver coin, paper currency, or anything else.[23]

After trial, Solyom moved for judgment notwithstanding the verdict, or in the alternative for a new trial, because the Commission had introduced no evidence that the medium in which it intended to pay would transfer fair market value to him.[24] The Court denied this motion.[25]

Subsequently, on the Commission's motion, and over Solyom's objection,[26] the Court authorized the Commission to deposit the condemnation-award into the court-registry, without specifying the type, quality, or amount of "dollars" to be deposited.[27]

Solyom appealed to the Court of Special Appeals of Maryland.[28] Solyom also petitioned the Court of Ap-

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[23] Inquisition, ¶ 2, Docket Entry No. 62 (1 Dec. 1981). *See* T-2, at 72.

[24] Defendant and Counter Plaintiff Richard L. Solyom's Motion for Judgment Notwithstanding the Verdict, or in the Alternative for a New Trial, Docket Entry No. 66 (3 Dec. 1981).

[25] Order of the Circuit Court for Montgomery County of 14 December 1981, Docket Entry No. 67 (15 Dec. 1981).

[26] Defendant Richard L. Solyom's Opposition to Plaintiff's Motion Requesting Possession and Authorization to Deposit Award into Court Registry Pending Appeal, Docket Entry No. 77 (12 Mar. 1982).

[27] Order of the Circuit Court for Montgomery County of 23 March 1982, Docket Entry No. 78 (24 March 1982). Subsequently, the Commission deposited checks into the registry of the Circuit Court. *See* Docket Entries Nos. 79 and 80 (1 April 1982).

[28] Order for Appeal by Richard L. Solyom, Defendant and Counter-Plaintiff, Docket Entry No. 73 (13 Jan. 1982).

peals of Maryland for a writ of certiorari to by-pass the appeal pending in the Court of Special Appeals.[29] The Court of Appeals denied that petition on 2 July 1982.[30]

In the Court of Special Appeals, Solyom contended that:

> 1. An eminent-domain judgment against the Commission is a "Debt" of the State of Maryland within Article I, § 10, cl. 1 of the United States Constitution.
>
> 2. Pursuant to Article I, § 10, cl. 1, the Commission has a duty to "Tender" only "gold and silver Coin in Payment" of this "Debt".
>
> 3. The Commission may not avoid this duty through interposition of Federal Reserve paper currency, irredeemable in gold or silver coin but with purported legal-tender character.
>
> 4. Moreover, under the Due Process Clause of the Fourteenth Amendment, the Commission must pay Solyom "just compensation", of which fair market value is the proper measure.
>
> 5. The obligation to pay "just compensation" the Commission may not repudiate either directly, by itself refusing to pay fair market value, or indirectly, by tendering irredeemable paper currency that fails as a matter of economic fact to transfer fair market value to Solyom. And, under the Due Process and Just Compensation Clauses

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[29] Solyom v. Maryland-National Capital Park and Planning Commission, No. 111 (filed 30 April 1982).

[30] A. at 17a.

of the Fifth Amendment to the United States Constitution, Congress has no power to license the Commission to repudiate its debts through the medium of debased paper currency.

6. Furthermore, even if irredeemable, legal-tender paper currency could transfer fair market value to Solyom, Article I, § 8, cls. 2 and 5, and Article I, § 9, cl. 1 of the United States Constitution, and the Seventh Amendment thereto disable Congress from emitting such currency for any purpose, or from declaring anything but a specific silver coin as the "dollar".

7. In addition, even if Congress itself could generate irredeemable, legal-tender paper currency, its purported delegation of that power to the private banks that constitute the Federal Reserve System is repugnant to the Due Process Clause of the Fifth Amendment.

8. Maryland's courts have plenary jurisdiction, and an obligation, to address all the constitutional questions Solyom raises. And finally,

9. Solyom is entitled to a new trial to develop a full factual record on the basis of which the courts can decide the foregoing constitutional issues.

Affirming the Circuit Court's disposition of Solyom's counterclaim, the Court of Special Appeals apparently agreed that an eminent-domain judgment against the Commission is a "Debt" of the State for constitutional purposes. But it held Article I, § 10, cl. 1 inapplicable to a purported payment of that debt in irredeemable Federal Reserve Notes, because " '[t]he mere utiliza-

tion of a standard of legal tender prescribed by Congress is not state action as prohibited by [that provision]' ".[31] The Court said nothing, however, concerning the validity *vel non* of Solyom's other claims under Article I, § 8, cls. 2 and 5, and the Fifth and Fourteenth Amendments.

Solyom then petitioned the Court of Appeals for a writ of certiorari. The Court of Appeals denied his petition as not "desirable and in the public interest".[32]

Solyom now seeks review of the decision of the Court of Special Appeals.

## SUBSTANTIALITY OF THE QUESTION PRESENTED

This appeal raises issues of constitutional law the proper resolution of which is vital to the economic well-being and political stability of the United States. Even now, these fundamental questions evoke the most serious scrutiny in the political branches of government at the state and national levels, in academic circles, and in the local, state, national, and even international news media—attesting to the public interest therein.

That this Court has never even addressed, let alone decided, these questions only emphasizes their importance. More compellingly still, on the few occasions when this Court did rule on related issues, it sustained in every particular the contentions Solyom asserts here, making this case, not a challenge to the fundamental principles of the nation's monetary system, but a vehicle for enforcing those principles.

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[31] *Id.* at 7a.

[32] *Id.* at 21a.

The Court of Special Appeals' decision reflects neither the importance of the issues Solyom presented, nor any proper concern for the tenets of constitutional law that should have informed that decision. Review by this Court is necessary, therefore, to provide Solyom an opportunity for a trial at which his constitutional arguments will receive a full and fair hearing.

## I. The Court of Special Appeals failed to decide most of the constitutional issues Solyom raised.

The Court of Special Appeals failed even to address most of the constitutional questions Solyom presented, although numerous decisions of this Court explicitly or implicitly support his contentions.[33]

*First,* this Court has established that "state action" exists wherever there is "an infusion of conduct by officials, panoplied with State power".[34] Here, through exercise of eminent-domain authority,[35] the Commission is self-evidently "clothed with the State's power"[36] for the purposes of Article I, § 10, cl. 1 and of the Due Process Clause of the Fourteenth Amendment.

*Second,* although this Court has never ruled that the phrase "make * * * a Tender in Payment of Debts" in Article I, § 10, cl. 1 connotes "[t]ender in Payment of Debts", or simply "pay", where a State's own debts are concerned, it has never decided the contrary, either. And Solyom submits—and will prove at trial, if per-

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[33] Solyom's contentions appear in outline *ante,* pp. 8-9.

[34] Terry v. Adams, 345 U.S. 461, 473 (1953) (opinion of Frankfurter, J.).

[35] Maryland Code art. 66D, § 5-101(a), *in* A. at 125a.

[36] *Ex parte* Virginia, 100 U.S. 339, 347 (1880).

mitted to do so—that the plain language, purpose, and history of Article I, § 10, cl. 1 compel such an interpretation.[37]

*Third,* opinions of this Court have repeatedly held the strictures of Article I, § 10, cl. 1 beyond the authority of Congress to set aside or modify.[38] Moreover, this Court has explicitly determined that the Constitution disables Congress from interfering with the sovereign *powers* of the States through a purported legal-tender law[39]—which compellingly implies that Congress

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[37] For example, historical evidence demonstrates that, in the late 1700's just as now, the verbal phrase "make an *X*" was equivalent to the verb "do *X*". *See* 1 *Oxford English Dictionary* (compact ed. 1971). Thus, the phrase "make * * * a Tender" in Article I, § 10, cl. 1 was (and is), in common parlance, equivalent to the verb "tender"—or, the phrase "make any Thing but gold and silver Coin a Tender in Payment of Debts" was (and is) equivalent to the phrase "tender any Thing but gold and silver Coin in Payment of Debts", where a State's own "Debts" were (are) involved.

Interestingly, as well, another common definition of the verb "make" in the late 1700's was "to pay; to give". 2 S. Johnson, *A Dictionary of the English Language* (1755). Using this meaning, the phrase "make any Thing but gold or silver Coin a Tender in Payment of Debts" would import "pay Debts in any Thing but gold or silver Coin", where a State's own "Debts" were concerned.

[38] Ogden v. Saunders, 25 U.S. (12 Wheat.) 213, 334-35 (1827) (Marshall, C.J., dissenting); Poole v. Fleeger, 36 U.S. (11 Pet.) 185, 212 (1837) (Baldwin, J., separate opinion); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 724-25 (1838); Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 570 (opinion of Taney, C.J.), 588 (opinion of Barbour, J.) (1840); Gunn v. Barry, 82 U.S. (15 Wall.) 610, 623 (1872); Edwards v. Kearzey, 96 U.S. 595, 604, 607 (1878).

[39] Lane County v. Oregon, 74 U.S. (7 Wall.) 71, 76-77 (1868), *cited with approval in* National League of Cities v. Usery, 426 U.S. 833, 840-46 (1976). *Accord,* Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 706-07 (1884).

has no less a disability to interfere through any legal-tender enactment with the States' performance of their constitutional *duties* under either Article I, § 10, cl. 1, or the Due Process Clause of the Fourteenth Amendment.

*Fourth,* a commonplace of constitutional jurisprudence is that the measure of "just compensation" in eminent-domain actions is fair market value,[40] and that the determination of such value is a judicial question to be decided after a trial of the economic facts, not on the basis of some arbitrary statutory *fiat.*[41] These principles compel a trial on the factual question whether the Commission's purported payment of the damages here in constantly depreciating, irredeemable paper currency can transfer fair market value to Solyom or will actually amount to incremental confiscation of his interest in land.[42]

*Fifth,* this Court has held that Congress may not repudiate obligations of the United States through the purported payment thereof in debased legal-tender paper currency.[43] Self-evidently, if Congress may not repudiate debts of the national government in that manner, it may not license the States to employ such currency to repudiate their obligations, either. Thus, the Commission's tender of irredeemable paper cur-

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[40] *E.g.*, United States v. New River Collieries Co., 262 U.S. 341, 343-44 (1923).

[41] *E.g.*, Monongahela Navigation Co. v. United States, 148 U.S. 312, 327 (1893).

[42] *See* Defendant's Exhibit No. 2 (Affidavit of Philip D. Bradley), *in* A. at 71a-80a.

[43] Perry v. United States, 294 U.S. 330, 348-58 (1935).

rency is unconstitutional if the economic facts establish that such a tender will not transfer to Solyom fair market value for his interest in land, but will instead repudiate at least part of the Commission's debt to him.[44]

*Sixth,* this Court has held that the constitutionality of congressional legal-tender paper currency depends upon its redeemability in gold or silver coin, thereby implicitly ruling that irredeemable currency cannot possess legal-tender character.[45] Particularly in light of the fundamental, qualitative economic differences between redeemable and irredeemable currencies,[46] this decision compels the conclusion that Solyom properly refused to accept the Commission's tender of irredeemable currency. Moreover, the Constitution itself explicitly establishes the unit of national currency as the "dollar", an historically determinate weight of silver in coined form.[47] This re-inforces the propriety of Solyom's refusal to accept a paper currency that lacks any factual or legal link to the constitutional

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[44] *See* Defendant's Exhibit No. 2 (Affidavit of Philip D. Bradley); *in* A. at 71a-80a.

[45] Knox v. Lee, 79 U.S. (12 Wall.) 457, 533 (opinion of the Court), 560, 561-62, 565 (Bradley J., concurring) (1871).

[46] *See* Defendant's Exhibit No. 4 (Affidavit of Dr. Elgin Groseclose), *in* A. at 95a-99a; Defendant's Exhibit No. 3 (Affidavit of Dr. John A. Sparks), *in* A. at 83a-91a.

[47] *See* U.S. Const. art. 1, § 9, cl. 1, *and* amend. VII. *See* E. Vieira, Jr., *The Monetary Powers and Disabilities of the United States Constitution: A Study in Constitutional Law Prepared for the United States Gold Commission* (1982), at 81-91. The historical facts on this matter will be the subject of expert-testimony if this Court grants Solyom a new trial. *See* Defendant's Exhibit No. 4 (Affidavit of Dr. Elgin Groseclose), *in* A. at 95a-99a.

"dollar" or, indeed, to silver (or gold) in any amount or form.[48]

*Seventh,* this Court has twice unequivocally condemned as beyond congressional competence the delegation of legislative power to private groups.[49] These decisions equally condemn the contemporary Federal Reserve System, because its economic-*cum*-political structure rests precisely on a purported delegation of congressional monetary powers to private special-interest groups in the field of banking.[50]

*Eighth and last,* this Court has held again and again that state courts of general jurisdiction have the power *and the duty* to enforce the provisions of the Constitution—and therefore, when necessary, to decide the constitutionality of congressional statutes.[51]

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[48] Interestingly, irredeemable, legal-tender paper currency first appeared in this country only in 1968. Act of 24 June 1967, Pub. L. 90-29, 81 Stat. 77. For a legal-historical analysis of the devolution of the monetary system from one based on gold and silver coin to one based on paper alone, *see* E. Vieira, Jr., ***The Monetary Powers and Disabilities of the United States Constitution, ante*** note 47, at 216-63.

[49] A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 537 (1935); Carter v. Carter Coal Co., 298 U.S. 238, 311 (opinion of the Court), 318 (Hughes, C.J., concurring) (1936).

[50] *See* Defendant's Exhibit No. 4 (Affidavit of Dr. Elgin Groseclose), *in* A. at 95a-99a. For a complete economic and constitutional analysis, *see* E. Vieira, Jr., *The Monetary Powers and Disabilities of the United States Constitution, ante* note 47, at 282-95.

[51] *See, e.g.,* Boston Stock Exchange v. State Tax Commission, 429 U.S. 318, 320 n.3 (1977); Irvin v. Dowd, 359 U.S. 394, 404 (1959); Mooney v. Holohan, 294 U.S. 103, 113 (1935); Smyth v. Ames, 169 U.S. 466, 527-28 (1898); Gulf, C. & S.F. Ry. v. Ellis, 165 U.S. 150, 159-60 (1897); Robb v. Connolly, 111 U.S. 624, 637 (1884); Ableman v. Booth, 62 U.S. (21 How.) 506, 519-20 (1858).

In sum, although Solyom's contentions taken together present a novel issue, they rest upon a solid foundation of decisions by this Court. Indeed, these decisions ultimately compel judgment in his favor should the historic and economic facts establish—as Solyom submits they will, if he can adduce evidence at trial—that Article I, § 10, cl. 1 literally and in the intention of the Framers of the Constitution extends to the payments of a State's debts; that the national monetary unit is the "dollar", a constitutionally fixed weight of coined silver; that irredeemable paper currency is qualitatively different from, and inferior to, either coin of the precious metals or redeemable paper currency; that purported payment of an eminent-domain judgment with irredeemable paper currency amounts to incremental confiscation, not "just compensation"; that the Federal Reserve System empowers private groups to exercise decision-making authority over national monetary policy; and that the continued use of irredeemable, legal-tender paper currency under the aegis of the Federal Reserve System will ultimately destroy the American economy.[32]

At the present stage of these proceedings, Solyom does not assert his entitlement to judgment on these constitutional issues. But, he does assert a right to develop at trial a full evidentiary record on the basis of which the courts of Maryland and, ultimately, this Court can intelligently address and decide these questions.

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[32] On this last-mentioned point, *see* Defendant's Exhibit No. 4 (Affidavit of Dr. Elgin Groseclose), *in* A. at 95a-99a; Defendant's Exhibit No. 7 (Affidavit of John Exter), *in* A. at 103a-16a.

Yet, notwithstanding that this Court's decisions overwhelmingly support Solyom's position, and notwithstanding that the only relief he seeks on appeal is an opportunity to prove his contentions at trial, the Court of Special Appeals affirmed the Circuit Court's refusal to permit a trial on these issues—solely on the basis that Solyom's argument under Article I, § 10, cl. 1 is supposedly invalid, *and without even mentioning, let alone addressing and deciding, any of his other substantial claims under Article I, § 8, and the Fifth and Fourteenth Amendments.*

As Solyom demonstrates hereinafter, the Court of Special Appeals' interpretation of Article I, § 10, cl. 1 is patently erroneous, and, in any event, is premature absent a full factual record developed at trial.[53] But, more importantly, its decision on the reach of Article I, § 10, cl. 1 is irrelevant to all the other issues Solyom raised throughout the course of this litigation, issues which some court *must* explicitly address if Solyom is to receive any semblance of due process of law. No ruling on Article I, § 10, cl. 1 can rationally determine that payment of an eminent-domain judgment in constantly depreciating, irredeemable paper currency constitutes "just compensation" rather than incremental

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[53] *See, e.g.*, Abood v. Detroit Bd. of Educ., 431 U.S. 209, 236-37 (opinion of Stewart, J.), 244 n. (opinion of Stevens, J.) (1977); Shaffer v. Heitner, 433 U.S. 186, 220-22 (1977) (Brennan, J., concurring and dissenting); Wheeler v. Barrera, 417 U.S. 402, 426-427 (1974); Socialist Labor Party v. Gulligan, 406 U.S. 583, 586-87 (1972); Cowgill v. California, 396 U.S. 371, 372 (1970) (Brennan and Harlan, JJ., concurring); Rosenblatt v. Baer, 383 U.S. 75, 100-01 (1966) (Fortas, J., dissenting); Polk Co. v. Glover, 305 U.S. 5, 10 (1938); United States v. Carolene Prods. Co., 304 U.S. 144, 152 (1938); Borden's Farm Prods. Co., Inc. v. Baldwin, 293 U.S. 194, 212 (1934).

confiscation under the Due Process Clause of the Fourteenth Amendment. No ruling on Article I, § 10, cl. 1 can determine that Congress has authority to license the States to repudiate their obligations by purported payment thereof in debased legal-tender paper currency under the Due Process Clause of the Fifth Amendment. No ruling on Article I, § 10, cl. 1 can determine that Congress has authority to issue irredeemable, legal-tender paper currency under Article I, § 8, cls. 2 or 5. And no ruling on Article I, § 10, cl. 1 can determine that Congress has authority to delegate its monetary powers, whatever they may be, to a cartel of private banks under the Fifth Amendment. Thus, on all of these issues lying at the very heart of this case, neither the Circuit Court at trial nor the Court of Special Appeals on appeal has said anything of legal materiality rationalizing their refusal to allow Solyom to present evidence in support of his constitutional arguments.

Therefore, even if Solyom were wrong about the applicability of Article I, § 10, cl. 1 in the instant circumstances, he would nevertheless be entitled to reversal of the Court of Special Appeals and remand for a trial of the facts on all the other, unanswered constitutional questions in this case.[54]

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[54] This Court has emphatically confirmed the right to a trial on the constitutional facts even where, unlike here, a litigant's likelihood of prevailing on the merits is slight. *See* Borden's Farm Prods. Co., Inc. v. Baldwin, 293 U.S. 194, 203-13 (1934).

**II. The Court of Special Appeals erroneously interpreted Article I, § 10, cl. 1.**

Solyom is not wrong about the applicability of Article I, § 10, cl. 1 here, however. The Court of Special Appeals held that "[Article I, § 10, cl. 1] merely prohibits the states, as opposed to the federal government, from making 'any Thing but gold and silver Coin a Tender in Payment of Debts'; that is, from declaring legal tender anything other than gold or silver", and that " '[t]he mere utilization of a standard of legal tender prescribed by Congress is not state action as prohibited by [Article I, § 10, cl. 1]' ".[55] Every statement in these holdings is irrelevant, question-begging, or erroneous.

*First,* the assertion that Article I, § 10, cl. 1 imposes limitations on the States, not the United States, is irrelevant because Solyom seeks to apply Article I, § 10, cl. 1 to actions of an instrumentality of Maryland, not of any agency of the national government. And it is wrong because this Court has held again and again that the *absolute* nature of the prohibitions in Article I, § 10, cl. 1 implies an equivalently complete disability in Congress to license the States to do what that clause proscribes.[56]

*Second,* in ruling that Article I, § 10, cl. 1 prohibits the States only "from declaring legal tender", the Court of Special Appeals begged the question of what the phrase "make any Thing but gold and silver Coin a Tender in Payment of Debts" means. To arrive at the interpretation that "make" means "declare", the

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[55] A. at 6a, 7a.

[56] *See* the cases collected *ante,* note 38.

Court considered only one idiomatic usage of the verb. Solyom agrees that this is *one* of *several* proper usages of the word "make". But he disagrees that it is the *only* proper usage, and emphasizes that the Court of Special Appeals provided no evidence or reasoning in support of its attribution of this unique connotation to that verb. As explained heretofore,[37] the verbal phrase "make * * * a Tender" is the idiomatic equivalent of the verb "tender"—and, therefore, the phrase "make any Thing but gold and silver Coin a Tender in Payment of Debts" is idiomatically equivalent to the phrase "tender any Thing but gold and silver Coin in Payment of Debts". Now, in as much as no State would ever "tender any Thing * * * in Payment of Debts" except where its own "Debts" were concerned, the phrase "make * * * a Tender" functionally reduces to the phrase "pay its Debts with any Thing but gold and silver Coin", where a State's debts are involved, as they are in this case. That is, as literally read, Article I, § 10, cl. 1 involves two distinct prohibitions: (i) a State may not declare (as, for example, in a statute) that some other entity or person may pay its or his debts to a third party in other than gold and silver coin; and (ii) a State may not require its own creditors to accept payment of its debts in other than gold or silver coin (as, for example, in the course of an eminent-domain proceeding). If permitted to adduce evidence at trial, Solyom will demonstrate that the idiomatic usages of the verb "make" just described were commonplace in the late 1700's. And he will show that the two precise situations exemplified immediately heretofore were in the minds of the Framers of the

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[37] *Ante*, note 37.

Constitution when they drafted Article I, § 10, cl. 1. Certainly, in the absence of a full factual record on these particulars, no evidentiary basis exists for the Court of Special Appeals' attribution of a narrowly restricted meaning to the verb "make"—particularly one that illogically licenses the States to impose "Tender[s]" other than "gold and silver Coin" on their own creditors, while disabling them from imposing such "Tender[s]" on the creditors of other debtors.

*Third,* the Court of Special Appeals' theory that "[t]he mere utilization of a standard of legal tender prescribed by Congress is not state action" is erroneous. Either Congress has required the States to use irredeemable, legal-tender Federal Reserve Notes in their financial transactions; or it has not. If it has not, then the use of such notes by any State is purely voluntary on its part, and is as much "state action" within Article I, § 10, cl. 1 as if the State had chosen to tender Japanese yen, French francs, German marks, or Russian roubles to its creditors. On the other hand, if Congress has purported to require the States to use Federal Reserve Notes, the question remains whether such a requirement is constitutional.[58] This Court has already ruled, however, that Congress has no power to interfere with the performance of any sovereign function of the States through a purported legal-tender law.[59] Exercise of the power of eminent domain is a

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[58] The further questions also remain whether Federal Reserve Notes are themselves constitutional, and whether the Federal Reserve System may lawfully emit them. These questions, however, arise under constitutional provisions other than Article I, § 10, cl. 1.

[59] Lane County v. Oregon, 74 U.S. (7 Wall.) 71, 76-77 (1868); Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 706-07 (1884).

sovereign function of a State.[60] Therefore, when a State uses Federal Reserve Notes as a medium of payment in eminent-domain proceedings, as a matter of constitutional law it acts according to its own volition, not the unconstitutional and thus legally nonexistent compulsion of Congress. And Article I, § 10, cl. 1 applies with full force.

In sum, even the Court of Special Appeals' decision on Article I, § 10, cl. 1 lacks any basis in the language, purpose, or previous interpretation of that provision.

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[60] *E.g.*, Boom Co. v. Patterson, 98 U.S. 403, 406 (1879).

## CONCLUSION

The constitutional issues Solyom raises in this appeal are novel and pregnant with significance for the future economic and political well-being of the United States. The Court of Special Appeals has refused even to admit the existence of most of these questions, and has failed intelligently to apply this Court's precedents to the issue it did decide. Moreover, Solyom does not seek a final adjudication of the merits of these issues here, only this Court's recognition that our legal system entitles him to introduce evidence at trial in support of his constitutional arguments. Perhaps he will be unable to convince a jury of the facts as he sees them—but the Constitution guarantees him an opportunity to try.

For the foregoing reasons, this Court should note probable jurisdiction of Solyom's appeal, and set this case down for full briefing and oral argument.

Respectfully submitted,

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10 June 1983

# APPENDIX

**OPINION OF THE COURT OF SPECIAL APPEALS OF MARYLAND, No. 337 (8 December 1982)**

REPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

September Term, 1982

No. 337

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RICHARD L. SOLYOM

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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Morton, Moylan, Moore, JJ.

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Opinion by Morton, J.

Filed: December 8, 1982

[1] The Maryland-National Capital Park and Planning Commission, a public body engaged in the governmental function of furnishing parks and public recreation areas in the Maryland-Washington Metropolitan District in Prince George's and Montgomery Counties, brought a petition for condemnation in the Circuit Court for Montgomery County of a 1,253 square foot parcel of land in order to complete the development of a local park. Richard L. Solyom, owner of a one-ninth interest in the property, counterclaimed seeking a declaratory judgment that the Commission was obligated under Article I, Section 10, Clause 1 of the United States Constitution, to "tender gold and silver coin, dollar for dollar, in payment of the debt determined by the condemnation judgment . . . to be owed . . . ." The Commission moved to strike and dismiss the counterclaim and for

summary judgment thereon. The trial judge (Fairbanks, J.), concluding that Article 1 did not compel payment in specie, dismissed the counterclaim and Solyom filed this timely appeal from that dismissal and various other orders and rulings predicated upon it.[1]

**[2]** The constitutional provision upon which appellant relies for the proposition that in order to be fully compensated for his interest in the land he must be paid in specie is Article I, Section 10, Clause 1 of the United States Constitution, which provides:

> "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts . . . ."

As appealing as the argument may seem to economists such as Mr. Solyom, Dr. John A. Sparks, Dr. Philip D. Bradley, and Dr. Elgin Groseclose,[2] and Senator Jesse Helms and Representative Ron Paul of the United States Congress,[3] it must fail.

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[1] These are: the court's order denying his motion to rescind the order dismissing the counterclaim and permit the taking of expert testimony, its refusal to instruct the jury that condemnation damages be paid in gold or silver coin only, its order denying his renewed motion to rescind the order dismissing the counterclaim, its order denying his motion for a directed verdict, its order denying Solyom's motion for judgment notwithstanding the verdict or in the alternative for a new trial, and the court's judgment on verdict of acquisition.

[2] Doctors Sparks, Bradley and Groseclose, although not permitted to testify, did file with the circuit court affidavits tracing the history of United States monetary policy and predicting the gloomiest of economic futures.

[3] Senator Helms and Representative Paul filed with this Court a brief *amici curiae* setting out, among other things, a collection of Bills introduced in the House and Senate during the 1981 Session calling for reinstatement of the dollar as a gold reserve currency and the stabilization of the value of the dollar.

Although some authorities see a serious question as to whether the framers of the constitution intended to prohibit the use of legal tender paper money,[4] it was soon taken for granted in this country that [3] the federal government did have the power to emit paper money. Congress, as early as the War of 1812, directed the issue of United States notes as currency with the quality of legal tender and in 1884, in the last of the Legal Tender Cases, the Supreme Court determined that Congress could do so in time of peace as well as war. *Juilliard v. Greenman*, 110 U.S. 421 (1884). The Court there stated that Congress, under its powers to borrow money on the credit of the United States and to issue circulating notes for the money borrowed, was authorized to establish a uniform national currency, either in coin or in paper, and to make that currency, dollar for dollar, legal tender for the payment of all debts, public and private.

Pursuant to its power over the monetary system, Congress in 1933 provided, as currently set out at 31 U.S.C.A., § 463, that:

> "Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

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[4] *See* Dam, The Legal Tender Cases. The Supreme Court Reporter (1981), p. 367.

The Supreme Court, concluding in *Norman v. Baltimore & O. R. Co.*, 294 U.S. 240 (1935), that "gold clause" stipulations in preexisting [4] local governmental and private obligations, interfering as they did with Congress's monetary power, could be abrogated by that statute, stated:

> "In the currency as thus provided, States and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard. Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their 'gold bonds' must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another. . . . It requires no acute analysis or profound economic inquiry to [perceive] the dislocation of the domestic economy which would be caused by such a disparity of conditions . . . .
>
> We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration." 290 U.S. at 315-316.

We perceive no conflict between Congress's exercise of that monetary power and Article I, Section 10, Clause 1 of the United States Constitution. That constitutional provision merely prohibits the states, as opposed to the federal government, from making "any Thing but gold and silver Coin a Tender in Payment of Debts"; that is, from declaring legal tender anything other than gold or silver. *See United States v. Rifen*, 577 F.2d 1111 (8th Cir. 1978). Faced with the issue whether the [5] state treasurer was

constitutionally required to tender a state income tax refund in gold or silver coin, the Supreme Court of Minnesota, in *Chermack v. Bjornson*, 223 N.W.2d 659, 661 (Minn. 1974), *cert. denied*, 421 U. S. 915 (1975), aptly stated:

> "The mere utilization of a standard of legal tender prescribed by Congress is not state action as prohibited by U.S. Const., Art. I, § 10, but rather an effectuation of validly exercised constitutional power of Congress [under] U. S. Const., Art. I, § 8."

We are in agreement and accordingly find no error committed by the trial judge.

JUDGMENT AFFIRMED;

COSTS TO BE PAID BY APPELLANT.

**OPINION OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, Law No. 56182 (27 July 1981)**

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law 56182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

v.

RICHARD L. SOLYOM, ET AL, *Defendant*

**INTRODUCTION**

This matter arises out of the petition for condemnation filed by the Maryland National Capital Park and Planning Commission to acquire the interest of Defendant Richard L. Solyom in 1,253 square feet of land needed by the Commission to complete the development of the Willard Avenue Local Park situated in Montgomery County, Maryland.

Defendant is the owner of a one-ninth interest in the property. He has filed a counterclaim asserting that he is entitled to be paid for his interest in "gold and silver coin" pursuant to Article I, Section 10, Clause 1 of the United States Constitution. Since payment has not yet been made, because the value of defendant's interest has not been fixed by inquisition, currently set for trial on November 30, 1981, the counterclaim in effect seeks a declaratory judgment that payment of the amount ultimately awarded must be in coin and silver coin.

To the counterclaim the Montgomery National Capital Park and Planning Commission has filed three responses;

1. A motion re recipiatur,
2. A motion to dismiss for lack of jurisdiction, and
3. A motion for summary judgment.

The motion re recipiatur may be disposed of as not being a proper pleading, since in effect, plaintiff seeks by the motion to raise substantive issues. This is not the function of a motion re recipiatur and the motion will be denied.
[2] The remaining two pleadings raise the same issue, albeit in different fashion, and will be treated together and resolved by a disposition of the motion for summary judgment. This method is chosen in recognition of the reluctance of courts to resolve actions for declaratory judgment on preliminary motions or nonsubstantive grounds.

**ISSUE**

Must the Montgomery National Capital Park and Planning Commission, as a state agency, tender to the defendant for the property taken from him, payment in gold and silver coin?

**DISCUSSION**

The constitutional provision upon which the defendant relies is contained in Article I, Section 10, of the United States Constitution (restrictions upon powers of the states) specifically Clause 1 thereof, and reads in part as follows:

> "No State shall - - - make any Thing but gold and silver Coin a Tender in Payment of Debts - - -"

Defendant argues from this provision that the Maryland National Capital Park and Planning Commission is a state agency and that the obligation to compensate the defendant for his property creates a debt of the state and therefore the state can make tender only in gold and silver coin. This argument has a certain appeal, when taken in conjunction with the fact that the current money in general circulation consists primarily of Federal Reserve notes, which are not redeemable in gold or silver or any other commodity.

Assuming, for purposes of this discussion, without deciding, that the Commission is a state agency and the payment of compensation to the defendant when ultimately fixed and payable creates a debt of the State of Maryland, the issue is then squarely presented.

Unfortunately for the defendant the identical issue has been [3] raised and decided adversely to his position on numerous occasions. Since 1968 a myriad of cases in State and Federal Courts have rejected the argument that Article I, Section 10, Clause 1 compels the payment of state debts in gold and silver coin. Representative of these cases are the following; *Chermack* v. *Bjornson*, 223 N.W. 2d 659 (Minn. 1974), *cert. den.* 421 U.S. 915 (1974); *Radue* v. *Zanaty*, 308 So. 2d 245 (Ala. 1975).

These and other cases too numerous to cite have uniformly held that the clause in question, while prohibiting a state from making or creating anything but gold or silver legal tender does not prohibit a state from paying debts with whatever the Federal Government has validly declared to be legal tender. *U.S.* v. *Rifen*, 577 F. 2d 1111, 1113 (8th Cir. 1978); *Lietch* v. *State Department of Revenue*, 519 P. 2d 1045 (Ore. App. 1974). In recognition of the fact that the Federal Constitution empowers the United States Congress to coin money and to regulate the value thereof (Article I, Section 8, Clause 5), no state may establish its own currency or create its own legal tender. *Dorgan* v. *Kouba*, 274 N.W. 2d 167, 172 (N.D. 1978).

Other cases hold that state courts have no jurisdiction over the subject matter since the power to declare what shall be money is vested exclusively in Congress and a state court has no authority to review actions of the Congress. *Allen* v. *Craig*, 564 P. 2d 552 (Kansas 1977).

If the position of the defendant is interpreted to be an attempt to attack the constitutionality of Federal Reserve notes, this issue has been repeatedly decided in favor of constitutionality. *Radue* v. *Zanaty*, 308 So. 2d 245 (Ala.

1975); *Daniels* v. *Arkansas Power and Light*, 601 S.W. 2d 845 (Ark. 1980). In fact, the issue has been so effectively laid to rest as to cause some courts to characterize as frivolous the argument that such notes are [4] unconstitutional. *U.S.* v. *Daly* 481 F. 2d 28, 30 (8th Cir. 1973); *U.S.* v. *Benson*, 592 F. 2d 257, 258 (5th Cir. 1979).

**ORDER**

In any event, there is no need to prolong this discussion, and based on the established principles of law laid down in a multitude of cases, including those cited herein, and in the memoranda submitted by the parties, it is by the Circuit Court for Montgomery County, Maryland, this 27 day of July, 1981,

ORDERED and DECLARED that Article I, Section 10, Clause 1 of the United States Constitution does not compel the plaintiff, Maryland National Capital Park and Planning Commission to tender, gold and silver coin in payment for the property interest of the defendant sought to be taken by the plaintiff, and it is further,

ORDERED and DECLARED that the counterclaim filed herein by the defendant, Richard L. Solyom, be and it is hereby dismissed.

/s/ Philip M. Fairbanks

Philip M. Fairbanks, Judge of the Circuit Court for Montgomery County, Md.

**ORDER OF THE COURT OF APPEALS OF MARYLAND, Petition Docket No. 111**

**(2 July 1982)**

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 111

September Term, 1982

(No. 337, September Term, 1982 Court of Special Appeals)

RICHARD L. SOLYOM

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

[Seal]

/s/ Robert C. Murphy
*Chief Judge*

Date: July 2, 1982.

**ORDER OF THE COURT OF APPEALS OF MARYLAND, Petition Docket No. 565**

**(24 March 1983)**

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 565

September Term, 1982
(No. 337, September Term, 1982 Court of Special Appeals)

RICHARD L. SOLYOM

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

[Seal]

/s/ Robert C. Murphy
*Chief Judge*

Date: March 24th, 1983.

**MANDATE OF THE COURT OF SPECIAL APPEALS OF MARYLAND, No. 337 (7 January 1983)**

**MANDATE**

COURT OF SPECIAL APPEALS OF MARYLAND

No. 337, September Term, 1982

RICHARD L. SOLYOM

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

December 8, 1982—Opinion by Morton, J.
Judgment affirmed; costs to be paid by appellant.

January 7, 1983—Mandate isssued.

STATEMENT OF COSTS:

| | |
|---|---|
| In Circuit Court: for Montgomery County | |
| Record | 30.00 |
| Stenographer's Costs | 332.50 |
| In Court of Special Appeals: | |
| Filing Record on Appeal | 30.00 |
| Printing Brief for Appellant | 609.13 |
| Reply Brief | |
| Portion of Record Extract—Appellant | |
| Printing Brief for Cross-Appellee | |
| Printing Brief for Appellee | |
| Portion of Record Extract—Appellee | NOT SUPPLIED |
| Printing Brief for Cross-Appellant | |

*STATE OF MARYLAND, Sct:*

*I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.*

*In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this Seventh day of January A.D. 1983.*

[Seal] /s/ Howard E. Friedman
*Clerk of the Court of Special Appeals of Maryland.*

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

# NOTICE OF APPEAL
## (17 May 1983)

No. 337

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IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 1982

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RICHARD L. SOLYOM, *Appellant,*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Appellee.*

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**NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

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Notice is hereby given that Richard L. Solyom appeals to the Supreme Court of the United States from the final judgment of the Court of Special Appeals of Maryland entered in this action on 8 December 1982. The Court of Appeals of Maryland denied Appellant's petition for a writ of certiorari on 24 March 1983.

The decision of the Court of Special Appeals held that Appellant has no right to adduce evidence in an eminent-domain proceeding to support his claims that Maryland Code art. 66D, § 5-101(a), and *Real Property*, §§ 12-103, 12-104(a), 12-105(b), and 12-108(a), and Rules U3, U19g, and U19h of the Maryland Rules of Procedure, as applied in this case, violate Article I, Section 8, Clauses 2 and 5, and Article I, Section 10, Clause 1 of the United States Constitution, and the Fifth and Fourteenth Amendments

thereto. Appellant maintains that this decision is erroneous in its entirety.

This appeal is taken pursuant to Title 28, United States Code, Section 1257(2) (1976).

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(703) 791-6780

*Attorneys for Appellant*
*Richard L. Solyom*

Done this 17th day of May, 1983.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Notice of Appeal to the Supreme Court of the United States were mailed, first class postage prepaid, this 17th day of May 1983 to:

The Clerk
Court of Special Appeals of Maryland
Annapolis, Maryland 21401-1698

and to

Arthur S. Drea, Jr.,
General Counsel
Sanford E. Wool,
Deputy General Counsel
Maryland-National Capital Park
and Planning Commission
Room 205
8787 Georgia Avenue
Silver Spring, Maryland 20907

/s/ Tracy E. Mulligan
TRACY E. MULLIGAN
Suite 204
416 Hungerford Drive
Rockville, Maryland 20850

*Attorney for Appellant*
*Richard L. Solyom*

## DOCKET ENTRIES

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182**

**(Cir. Ct., Montgomery Cty.)**

Law 56182

CLERK'S MEMORANDUM

DATE $000.00 CONDEMNATION JURY DEMAND: No

1. The Maryland-National Capital
Park and Planning Commission
a public body corporate
Plaintiff/Counter Defendant

Laurie Sue Borman co-counsel
1. Thomas H. Countee, Jr.
Arthur S. Drea, Jr.
Sanford E. Wool
8787 Georgia Avenue
Silver Spring, Maryland 20907
565-7374
D. S. Sastri 209-7
(301) 765-7469, 7470

-vs-

1. Tracy E. Mulligan
416 Hungerford Dr., #204
Rockville, Maryland 20850
340-9670
1. Edwin Vieira
12408 Greenhill Road
Silver Spring, Maryland 20904
622-2804

1. Richard L. Solyom
Defendant/Counter Plaintiff

1. Richard Louis Solyom de
Antalfa—proper person
One Horizon Road
Fort Lee, New Jersey 07024

2. Washington Suburban Sanitary Commission

2. Michael J. Walls
4017 Hamilton Street
Hyattsville, Md. 20781
699-4737

3. Montgomery County, Maryland

3. Paul A. McGuckian
Robert G. Tobin, Jr.
County Office Building
Rockville, MD 20850
279-1346

Costs:

| | |
|---|---|
| Clerk | $60.00 |
| Atty | 5.00 |
| Sheriff M. Pd. Ck. | 5.00 |
| Sheriff P.G. Pd. Ck. | 5.00 |
| Receipt No. | 27283 |
| Amount 10-30-80 | 260.00 |

Plaintiff's Witnesses
Myron Goldberg, swn.
Margaret Elliott, swn.

Defendant's Witnesses

Additional costs:

| | |
|---|---|
| Atty D. | 5.00 |
| Recording Costs: | $38.00 |
| Jury | $420.00 |
| Appeal #16541 1-13-82 | $30.00 |

Law 56182

CLERK'S MEMORANDUM

**DOCKET ENTRIES**

| DATE | CONDEMNATION |
|---|---|
| 10-30-80 | #1 Petition filed. |
| 10-30-80 | #2 Line to issue pursuant to Rule 107a(2) as to Richard L. Solyom filed. |
| 11-5-80 | #3 Summons issued to Sheriff of Montgomery County as to Montgomery County, Maryland to December return day, to Sheriff of Prince George's County as to Washington Suburban Sanitary Commission to December return day and Pursuant Rule 107a(2) as to Richard L. Solyom and mailed to attorney. |
| 11-18-80 | #4 Sheriff Prince George's County return: Summoned Washington Suburban Sanitary Commission filed. |
| 11-19-80 | #5 Sheriff's Return: Summoned Montgomery County, Maryland filed. |
| 12-4-80 | #6 Affidavit of Service and copy of Return Receipt filed. |
| 12-8-80 | #7 Defendant, Washington Suburban Sanitary Commission's Answer filed. |
| 12-11-80 | #8 Defendant, Montgomery County, Maryland's Answer to Petition for Condemnation filed. |
| 12-15-80 | #9 Defendant, Richard L. Solyom's Answer, and copy of letter filed. |
| 12-29-80 | #10 Defendant, Richard L. Solyom's Plea filed. |
| 12-29-80 | #11 Defendant, Richard L. Solyom's Counterclaim against Plaintiff, The Maryland National Capital Park and Planning Commission filed. |

2-2-81 #12 Plaintiff's Motion Ne Recipiatur or to Strike, points and authorities, and Request for hearing filed.

2-13-81 #13 Richard L. Solyom's Certificate of Service on Attorney General and letter filed.

2-13-81 #14 Defendant Richard L. Solyom's Reply to Plaintiff Maryland-National Capital Park and Planning Commission's Motion Ne Recipiatur or to Strike Defendant's Counterclaim for Declaratory Judgment filed.

2-13-81 #15 Defendant Richard L. Solyom's Two (2) Statements of Points and Authorities in Opposition to Plaintiff Maryland-National Capital Park and Planning Commission's Motion Ne Recipiatur or to Strike Defendant's Counterclaim for Declaratory Judgment filed.

3-19-81 #16 Notice of Trial date of November 30, 1981 filed.

3-19-81 #17 Order of Court (Cahoon, J.) for Pre-Trial Procedures and Calendar Call on November 18, 1981 filed. (copies mailed)

3-20-81 #18 Order of Court (Cahoon, J.) for pre-trial procedures and calendar call on November 18, 1981 filed. (copies mailed)

3-23-81 #19 Notice of Trial dat of November 30, 1981 filed.

4-21-81 #20 Notice of hearing date filed.

4-29-81 #21 Plaintiff's Memorandum of Law in Opposition to Counterclaim and Two (2) Attachments filed.

4-29-81 #22 Plaintiff's Memorandum of Law in Support of Motion Ne Recipiatur and to strike and Two (2) Attachments filed.

4-29-81 #23 Plaintiff's Memorandum of Law in Support of Motion to Dismiss for Lack of Jurisdiction and Two (2) Attachments filed.

4-29-81 #24 Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment and Two (2) Attachments filed.

4-30-81 #25 Plaintiff's Motion to Dismiss Counterclaim for Lack of Jurisdiction and Points or Authorities filed.

4-30-81 #26 Plaintiff's Motion for Summary Judgment in its Favor on Defendant's Counterclaim Points and Authorities and Notice of hearing filed.

5-12-81 #27 Plaintiff and Defendant, Richard L. Solyom stipulate that the time for answering Plaintiff's Motion for Summary Judgment and to Dismiss for Lack of Jurisdiction Defendant's Counterclaim is extended to June 1, 1981 filed.

5-21-81 #28 Defendant, Richard L. Solyom, Statement of Points and Authorities in Oppositic to Plaintiff's Motion to Dismiss Defendant's Counterclaim for Lack of Jurisdiction filed.

5-21-81 #29 Defendant, Richard L. Solyom, Statement of Points and Authorities in Oppositic to Plaintiff's Motion for Summary Judgment in its Favor on Defendant's Counterclaim filed.

5-21-81 #30 Defendant, Richard L. Solyom, reply to Plaintiff's Motion to Dismiss Defendant's Counterclaim for Lack of Jurisdiction filed.

5-21-81 #31 Defendant, Richard L. Solyom, reply to Plaintiff's Motion for Summary Judgment in its Favor on Defendant's Counterclaim filed.

6-11-81 #32 Line to enter the appearance of Laurie Sue Borman as co-counsel for plaintiff filed.

6-23-81 #33 Line to enter the appearance of D. S. Sastri, as co-counsel for the plaintiff filed.

6-25-81 #34 Defendant, Richard L. Solyom's Line to file, Affidavit of Dr. Elgin and One (1) Exhibit filed.

7-2-81 #35 Hearing on Plaintiff's Motion Ne Recipiatur or the Strike (#12) (Fairbanks, J.) Under Advisement. Ms. Hatcher reporting.

7-2-81 #36 Hearing on Plaintiff's Motion to Dismiss Counterclaim for Lack of Jurisdiction (#25); under advisement.

7-2-81 #37 Hearing on Plaintiff's Motion for Summary Judgment in its favor on Defendants Counterclaim (#26), under advisement.

7-9-81 #38 Defendant, Richard L. Solyom's Supplemental Memorandum of Law filed.

7-16-81 #39 Plaintiff's Motion Ne Recipiatur or to strike and Points and Authorities filed.

7-28-81 #40 Defendant, Richard L. Solyom, Reply to Plaintiff's Motion Ne Recipiatur or to strike Defendant's Supplemental Memorandum of Law filed.

7-28-81 #41 Order of Court (Fairbanks, J.) Denying Motion Ne Recipiatur filed. (copies mailed)

7-28-81 #42 Order of Court (Fairbanks, J.) that Article 1, Section 10, Clause 1 of the United States Constitution does not compel the plaintiff to tender gold, silver coin in payment for the property interest of the defendant sought to be taken by the plaintiff and that the counterclaim filed herein by the defendant, Richard L. Solyom is dismissed filed. (copies mailed)

10-31-81 #43 Plaintiff's Interrogatories, filed.

11-10-81 #44 Plaintiff's Motion to Compel Discovery, Points and Authorities, and Affidavit filed.

11-16-81 #45 Defendant and Counter-Plaintiff, Richard L. Solyon's Motion to Rescind Order of 28 July 1981, and Permit the Taking of Expert-Testimony and Points and Authorities filed.

11-18-81 #46 Pre-trial procedures and Calendar Call (Cahoon, J.) Court sets case for a 2½ day jury trial and sets a hearing on Plaintiff's Motion to Compel Discovery on November 19, 1981, at 8:30 a.m. Ms. Hatcher reporting.

11-18-81 #47 Plaintiff's Pre-trial Statement filed.

11-18-81 #48 Plaintiff's Voir Dire Questions filed.

11-18-81 #49 Defendants' Pre-trial Statement filed.

11-18-81 #50 Defendant's Motion for Voir Dire Questions filed.

11-18-81 #51 Defendant-Counter Plaintiff, Richard L. Solyom's proposed jury instructions filed.

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11-19-81 #52 Defendants' Oral Motion for Continuance (Cahoon, J.) granted, trial to be governed by Previous Pre-trial Order. Date of Evaluation to be same. Ms. Leesman reporting.

11-19-81 #53 Hearing on Defendant and Counter-Plaintiff, Richard L. Solyom's Motion to Rescind Order of 28 July 1981 and Permit The Taking of Expert Testimony, denied.

11-19-81 #54 Court strikes determination as to Continuance, denies defendant's motion for Continuance.

11-18-81•• #55 Plaintiff's Motion Ne Recipiatur or to Strike and Plaintiff's Opposition to Defendant and Counter-Plaintiff Richard L. Solyom's Motion to Rescind order of 28 July 1981, and Permit the taking of Expert testimony filed.

11-30-81 #56 Jury sworn (Sanders, J.) Mr. Hough, reporting.

11-30-81 #57 Juror's Seating arrangement, filed.

11-30-81 #58 Defendants' exhibits #1 thru #4 marked for identification and filed.

12-1-81 #59 Trial resumed. Mr. Hough, reporting.

12-1-81 #60 Defendant orally renews motion to Rescind Order of July 28, 1981 (Sanders, J.) denied.

12-1-81 #61 At close of Plaintiff's case defendants' Motion for Directed Verdict; denied.

12-1-81 #62 Verdict: Inquisition in the amount of one thousand Four Hundred and sixty two ($1,462.00) dollars, filed.

12-1-81 #63 Plaintiff's exhibits #1 thru #4 admitted and filed. Defendants' exhibits #5 and #6 marked for identification and filed.

12-1-81 #64 Exhibit sheet, filed.

11-30-81 #65 Defendant, Richard L. Solyom's Answers to Interrogatories, copy of plats and pictures filed.

12-3-81 #66 Defendant, Richard L. Solyom's Motion for Judgment Notwithstanding the Verdict, or in the Alternative for a New Trial, Memorandum of Points and Authorities filed.

12-15-81 #67 Order of Court (Sanders, J.) that the said Motion for Judgment Notwithstanding the Verdict, or in the Alternative for a New Trial is denied, filed. (Copies mailed)

12-15-81 #68 Judgment on Verdict of Inquisition, that the land mentioned and described in the Petition be condemned to and for the use of the Plaintiff, The Maryland National Capital Park and Planning Com-

mission and Judgment in favor of the Defendants, Richard L. Solyom, et al against the Plaintiff, The Maryland National Capital Park and Planning Commission for the sum of ONE THOUSAND FOUR HUNDRED SIXTY TWO AND 00/100 DOLLARS ($1,462.00) current money with interest from December 1, 1981, plus costs and court costs.

12-21-81 #69 Plaintiff, The Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, and Montgomery County, Maryland's Line to Note: that the only person who has an interest in the subject property of this case and the only person from whom a transfer of title to the Maryland-National Capital Park and Planning Commission will be required is Richard L. Solyom and understand and concur that the Inquisition in the case disposed of Defendant Richard L. Solyom's interest in the property and that no other property interest needed to be addressed in said Inquisition filed.

1-12-82 #70 Defendant, Richard L. Solyom's Motion to Reopen Record and to Shorten Time for Response, Statement of points and authorities filed.

1-12-82 #71 Order of Court (Sanders, J.) the Record in this action be reopened to allow Defendant-Counter Plaintiff to file as a part thereof the affidavit of John Exter as Proffert of expert testimony on financial and banking practices that would have been given if the counter claim in this case had not been dismissed filed. (copies mailed)

1-13-82 #72 Affidavit of John Exter, pursuant to Order of the Court filed January 12, 1982 filed.

1-13-82 #73 Defendant, Richard L. Solyom's Order for Appeal filed.

1-13-82 #74 Court of Special Appeals of Maryland Prehearing Information Report handed to Attorney pursuant to Maryland Rule 1023.

1-27-82 #75 Order of Court of Special Appeals (Couch, J.) the above captioned appeal proceed without a Prehearing/Conference filed.

1-28-82 #76 Plaintiff's Motion Requesting Possession and Authorization to Deposit Award into Court Registry Pending Appeal, Points and Authorities filed.

3-12-82 #77 Defendant, Richard L. Solyom's Opposition to plaintiff's Motion Requesting Possession and Authorization to deposit award into Court Registry Pending Appeal, Statement of Points and Authorities filed.

3-24-82 #78 Order of Court (Sanders, J.) the Motion Requesting Possession and Authorization to Deposit Award Into Court Registry Pending Appeal be Granted filed. (copies mailed)

4-1-82 #79 Check in the amount of $1,462.00 received from the Maryland National Capital Park & Planning Commission, receipt no. 0445 deposited in the registry of the Court.

4-1-82 #80 Check in the amount of $463.00 received from the Maryland National Capital Park and Planning Commission, receipt no. 0444 deposited in the Registry of the Court.

**DEFENDANT'S EXHIBIT NO. 1**

**Affidavit of Dr. John A. Sparks**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56, 182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

v.

RICHARD L. SOLYOM, *Defendant*

RICHARD L. SOLYOM, *Counter-Plaintiff*

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter-Defendant*

**AFFIDAVIT OF DR. JOHN A. SPARKS**

I, JOHN A. SPARKS, being first duly sworn, depose and say that I am preparing this Affidavit in the above captioned matter, and do hereby file this Affidavit in support of Richard L. Solyom, defendant and counter-plaintiff.

**QUALIFICATIONS**

I submit the following as a list of my academic credentials and background:

EDUCATION:

1969 J.D., University of Michigan Law School, Ann Arbor, Michigan

1966 A.B., Grove City College, Grove City, Pennsylvania (Economics)

[2] EXPERIENCE:

Present Associate Professor of History and Business Administration and Director, Institute on Public

Policy and Private Enterprise, Grove City College, Grove City, Pennsylvania.

President, Public Policy and Education Fund, Inc. a private non-profit research corporation.

Partner, Bogaty, McEwen, Sparks & Kochems, Attorneys at Law, Grove City, Pennsylvania.

1971-1976 Chairman, Division of History and Business Administration, and Associate Professor, Hillsdale College, Hillsdale, Michigan.

Director, Hillsdale Summer Institute in Political Economy, Hillsdale College, Summers 1973-1976.

Director—Legal and Paralegal Studies

Private Practice of Law—Sole Practitioner

1969-1971 Member of the Division of Economics and Business Administration—Assistant Professor
Associated with private law firm

HONORS, AWARDS AND FELLOWSHIPS:

While teaching at Grove City College:

One of twenty participants in Harvard Law School Conference on Criminal Justice, sponsored by Liberty Fund, Spring, 1977.

While teaching at Hillsdale College:

Outstanding Young Men in America, 1971 & 1972
Outstanding Educators of America, 1972
Named "Professor of the Year" by Graduating Seniors—1973
Summer Writing Grant—Liberty Fund, Indianapolis, Indiana, for work on the theory of retributive justice, 1975
Named R. C. Hoiles Fellow—1975-1976

While attending the University of Michigan Law School:
H. B. Earhart Foundation Fellow—H.B. Earhart Foundation, Ann Arbor, Michigan

[3] While attending Grove City College:

Ingersoll Foundation Fellow
Highest Honors in Economics
Member, Omicron Delta Kappa
Named to Who's Who Among College and University Students—1965 and 1966
Selected Omicron Delta Kappa "Senior Man of the Year" by faculty and student body

PROFESSIONAL AND OTHER ORGANIZATIONS:

Member, State Bar of Michigan (passed Bar November 1969)
Member, State Bar of Pennsylvania
Member, American Bar Association
Trustee, John B. Curran Foundation (educational foundation) Wilmington, Delaware
Trustee, Hillsdale Community Hospital, 1974-1976, Secretary, 1976
Member, Textbook Evaluation Committee, America's Future, Inc., New Rochelle, N.Y., 1974-present

PUBLICATIONS:

*Book Reviews:*

*Frederic Bastiat, A Man Alone,* George C. Roche, III, Hillsdale Magazine, October, 1971.

"The Wisdom and Restraint of Thomas Malthus," Review of *Homage to Malthus,* Jane Soames Nickerson, *University Bookman,* Winter, 1976.

"A Well Considered Return to Punishment," Review of *Punishing Criminals* by Ernest van den Haag, University Bookman, Spring, 1978.

Appearing in *Textbook Evaluation Report,* America's Future, Inc., New Rochelle, N.Y.:

*Private Business Enterprises,* Hale A. Newcomer, 1975

*Economics: Concepts and Institutions,* S.W. Helburn, et al., 1976

*Economics, Principles and Applications,* John W. Kennedy and Arthur R. Olsen

*Elements of Economics,* Wallace C. Peterson

*Economics, Its Nature and Importance,* G. Carl Wiegand

Forthcoming in issues of *Textbook Evaluation Report: Economics Today,* Roger Leroy Miller

*Economics: Principles & Policy from a Christian Perspective,* Tom Rose

*Articles:*

"Monopolist, Can He Charge Anything He Wants," December, 1971, *Freeman.* Reprint of above in Reader's Review, National Research Bureau.

[4] "American Education at the Crossroads," May, 1972, *The Eleusis.*

"Physician Maldistribution?" *Private Practice, Journal of Socio-Economic Medicine,* September, 1972.

"Those Fellows with Black Hats—The Speculators," August, 1974, *Freeman.*

"The Legal Standing of Gold—Contract vs. Status," Chapter 5 in *Gold is Money,* ed. Hans F. Sennholz (Westport, Connecticut: Greenwood Press, 1975)

"State Withdrawal of Ratification of a Proposed U.S. Constitutional Amendment—Memorandum of Law" in *Yes . . . We Can Rescind the Equal Rights Amendment,* (booklet), ed. Elaine Donnelly (Detroit, Michigan: Michigan Stop E.R.A. Committee, 1975).

"The Reconstruction of the Criminal Law—Retribution Revived," *Journal of Christian Reconstruction,* Winter 1976-1977, Vol. III, No. 2

"Medical Myth #1, There is a Physician Maldistribution Crisis," *Private Practice, Journal of Socio-Economic Medicine,* Vol. 9 No. 10, October 1977

"World Hunger," November, 1978, *Freeman.*

"The Nestle Controversy—Anatomy of a Boycott," Special Report of Public Policy Education Fund, Inc. (Summer, 1979)

"Multi-nationals—Are They A Menace to the Third World?" Special Report of Public Policy Education Fund, Inc. (Spring, 1980)

EXPERT WITNESS APPEARANCES:

Appeared as an expert witness on monetary theory and history in the case of Gordon B. Leitch, Jr. and Mary C. Leitch v. Commissioner of Internal Revenue, Docket No. 12669-7, U.S. Tax Court, Portland, Oregon, November, 1978.

EDITORIAL:

Bi-Weekly columnist on economics and public policy for *The Freedom Newspapers,* a chain of 25 newspapers including the *Santa Ana Register,* the *Colorado Springs, Gazette Telegraph,* the *Lima, Ohio, News* (1975-1976)

WORK IN PROGRESS:

Editing Clarkson N. Potter's "Argument Against the Power of Congress to Make United States Treasury Notes a Legal Tender," (Washington, D.C.: Gibson Brothers, Printers, 1871) with an "Introduction to the Legal Tender Controversy."

[5] COURSES TAUGHT:

Principles of Economics
Government and Business
Labor-Management Relations
Business Law
Business Policy
U.S. Economic History
U.S. Constitutional History

## SPECIFIC TESTIMONY

### [6] I. THE THEORY OF MONEY

#### A. The General Economic Conditions for the Use of Money

For the idea of money to become important in any society, there must be the freedom to and interest in exchanging goods and services. As the late internationally known monetary economist, Ludwig von Mises, said: "The phenomenon of money presupposes an economic order in which production is based on division of labor and in which private property consists not only in goods of the first order (consumption goods), but also in goods of higher orders (production goods). Where producers and consumers meet together to exchange goods and services by bargaining among themselves, money and the need for money come into existence. The emergence of money then is an entirely natural commercial occurrence made necessary by economizing and enterprising men who seek to exchange their goods and services with one another."[1]

#### B. The Origin of Money

##### 1. *Direct exchange—barter*

Economists agree that in the earliest days of voluntary social cooperation exchanges of goods that took place were probably mostly direct exchanges. A direct exchange is

made when one producer exchanges the good he has for the good possessed by another producer. One can imagine that one producer might produce fish and another producer might pick fruit. If the two producers could agree upon quantities of those items to exchange, and if they both wanted what the other producer had to offer, then a direct exchange could be made. Today we would refer to such exchanges as barter transactions, meaning that one good that will be consumed is exchanged for another good that will be consumed without the intervention of a medium of exchange. Such direct exchange, as acknowledged by economists, eventually become [7] extremely awkward. A party who is intent upon exchanging what he has must always find another party who wants what he has and who wants the quantities of what he has and, besides that, who has a good which the first producer wants. As the production of wealth and the division of labor increase in a society, direct exchanges become more complicated if not impossible.[2]

**2.** ***Indirect exchange—a medium of exchange***

Indirect exchange occurs when parties find that direct barter is impossible or extremely difficult. Indirect exchange always becomes more necessary as there is an increase in production and wants that members of the society wish to satisfy. Thus, there develops not only a demand for goods for direct consumption, but there arises a demand for goods that the purchaser does not wish to directly consume but wishes to dispose of by further exchange.[3] This new kind of demand is a demand for a good that can then be marketed more readily by the holder of it in order to receive the goods he actually wants to consume. Perhaps an example will be of some help. Suppose that a producer of eggs wants to exchange those eggs for shoes. However, in the barter economy he cannot find a cobbler who wishes to purchase his eggs by exchanging them for shoes. Suppose that our egg owner knows that the cobbler will accept tobacco in exchange, but the egg owner presently does not

possess tobacco. If he exchanges his eggs successfully for tobacco and then exchanges the tobacco for the shoes, he has used the tobacco as a means of indirect exchange, or as a medium of exchange. He exchanged his eggs for the tobacco because the tobacco, in this case, was more marketable. Eventually, in every society in which exchange is allowed, certain goods are deemed by that society's members to be most marketable or exchangeable. As Mises says:

> "It was in this way that those goods that were originally the most marketable became common media of exchange, i.e. goods into which all [8] sellers of other goods first converted their wares and which it paid every would-be buyer of any other commodity to acquire first. And as soon as those commodities that were relatively most marketable had become common media of exchange, there was an increase in the difference between their marketability and that of all other commodities, and this in its turn further strengthened and broadened their position as media of exchange."[4]

### C. Money—The Most Marketable Good

Economists recognize that certain commodities have been selected by different societies as common media of exchange. It is thought, for example, that salt was the common medium of exchange in Abyssinia and that cattle were used as media of exchange in ancient Greece. In our own colonial period, tobacco often served as money, that is, it was demanded, not for its own use, but because it was the most marketable good in Colonial Virginia or some other tobacco producing state. "Whenever a direct exchange seemed out of the question, each of the parties to a transaction would naturally endeavor to exchange his superfluous commodities, not merely for more marketable commodities in general, but for the most marketable commodity; and among these again he would naturally prefer which ever particular commodity was the most marketable of all. The greater the marketability of the good first acquired in

indirect exchange, the greater would be the prospect of being able to reach the ultimate objective without further maneuvering.'"[5] Monetary economists point out that though many commodites may at first be used as monies, there is an inevitable tendency for the choices of consumers to eventually reject some of these commodities as monies and to favor one or two commodities which then emerge as the predominant monies of the area or region.

In monetary history the two most common goods chosen as money by those who engaged in commercial transactions were two precious metals—gold and silver.

> "For hundreds, even thousands, of years, the choice of mankind has wavered undecided between gold and silver. The chief cause of this [9] remarkable phenomenon is to be found in the natural qualities of the two metals. Being physically and chemically very similar, they are almost equally servicable for the satisfaction of human wants. . . . In isolated communities the employment of one or other metal as sole common medium of exchange has occasionally been achieved, but this short-lived unity has always been lost again as soon as the isolation of the community has succumbed to participation in international trade."[6]

However, whichever money metal is eventually chosen, or whatever good other than these two precious metals might be chosen in the future by mankind, the fact remains that a good of some sort will always emerge to facilitate the exchange of goods and services between men in any economy where such transactions are allowed.

### D. The Derived Functions of Money—Money as a Transmitter of Value Through Time and Space

In certain cases, citizens may demand money in order to store it up in preference to other goods purchased. All consumers hold amounts of money for varying times in order

to make future purchases. Therefore, it is sometimes said that money acts as a transmitter of value through time and space. However, it is clear that this secondary function of money is directly related to and derived from the eventual ability of the holder of the money to exchange it for a consumable good. Therefore, the function of money as a transmitter of value through time and space is derived from the value of money as a medium of exchange. For example, a European farmer may wish to immigrate to America. He sells his property in Europe and receives in exchange money which is used, upon his landing in America, to buy a new homestead. There is a very real sense in which the money, in this case, has been used as a transmitter of values through time and space. This function of money as a transmitter of value through time and space is clearly related to the ability of the holder of the money to exchange the money for a consumable good.[7]

## [10] II. THE DEMAND FOR AND THE SUPPLY OF MONEY

### A. The Demand for Money

The value of money at any given point in time is best understood by thinking of money just as if it were any other good. Economists agree that the price of ordinary goods, other than money, is determined by the competition between buyers and sellers on the marketplace, which competition is usually referred to as supply and demand. Money, in this respect, is no different from other goods. That is, the price of money, like other prices, is determined in the last resort by the valuations of buyers and sellers, that is, persons who demand money and supply money.[8] An individual's demand for money springs from the fact that money is a useful good in making further exchanges. Possession of it permits a person to acquire goods in the near or more distant future. The possessor of money may want to keep a store of it to provide exchange power for circumstances which have not yet unfolded.[9] The demand

for money varies for a number of reasons from person to person and from time to time. As economist Hans Sennholz says,

> "In an advancing economy, for instance, more and more goods are offered for exchange, which tends to increase the demand for money. In a declining economy where productive capital is consumed and fewer goods reach the market, the demand for money will decline. In all such cases we speak of 'goods-induced influences on the demand for money.' . . . There are a great number of factors that directly affect the market demand for money. A growing population, for instance, with millions of maturing individuals entering the production process and eager to establish cash holdings, generates new demand, which in turn tends to raise the purchasing power of money and to reduce goods prices. On the other hand, a declining population with declining output would generate the opposite effect. . . . All such variations in demand affect the objective exchange value of money but we must never forget that all these factors exert their influence on individual valuation and attitude toward money. In the possession of certain cash holdings certain individuals may decide for one reason or another to increase or reduce their holdings. Reacting to the same external influences many people may act alike. If they increase their demand, the exchange value of money tends to rise; if they reduce their demand, the exchange value of money tends to fall."[10]

Although economists acknowledge that changes in the demand for money can [11] gradually and sometimes markedly change the value of money, it is acknowledged that the widest and most notable variations in the value, that is, the purchasing power, of money does not follow from demand changes so much as from changes in the supply of money.

**B. The Supply of Money**

No determinant of demand which has already been mentioned is subject to such wide variation and fluctuations as the determinant of the value of money which we call its supply. For moderns, living as they do under a paper money standard, the supply of money can be altered considerably in a relatively short time. During the age of the gold coin standard, when gold coins circulated freely, the supply of money was narrowly circumscribed by the supply of gold.

The economic effects of drastically increasing the supply of money are well known. Economists say that if the stock of money is increased in the hands of persons, the immediate consequence of such an increase is that the marginal utility to these persons of the monetary units diminishes. As Mises says,

> "This necessarily influences their behavior in the market. They are in a stronger position as buyers. They will now express in the market their demand for the objects they desire more intensively than before; they are able to offer more money for the commodities which they wish to acquire. It will be the obvious result of this that the prices of goods concerned will rise, and that the objective exchange-value of money will fall in comparison.
>
> But this rise of prices will by no means be restricted to the market for those goods that are desired by those who originally have the new money at their disposal. In addition, those who have brought these goods to market will have their incomes and their proportionate stock of money increased and, in their turn, will be in a position to demand more intensively the goods they want so that these goods will also rise in price. Thus the increase in prices continues, having a diminishing effect, until all commodities, some to a greater and some to a lesser extent, are reached by it." [11]

As can be seen by the above quotation, an increase in the supply of money exerts an influence on various goods prices, driving them upward in the case of an **[12]** increasing supply of money. Technically speaking, the increasing supply of money is called an inflation of the money. However, it so commonly results in generally rising prices that the prices themselves have become to be referred to, however incorrectly, as inflation.

In summary, then, it can be said that the value of money, which is to say its purchasing power, in popular parlance, is determined by the demand for it exerted by the propensity of persons to hold money in cash holdings, and by the supply of money which, in modern times, has been mostly dependent upon the monetary policies of political authorities. These two factors, the supply of money and the demand for money together affect its value.

## III. THE STATE AND COMMERCIAL MONIES

### A. The Mintage Powers

The great economist, Carl Menger, wrote in his *Principles of Economics*, first published in Vienna in 1871 that "money is not an invention of the state. . . . It is not the product of legislative act. Even the sanction of political authority is not necessary for its existence."[12] Menger here emphasizes that money rises out of the need of exchanging individuals for a facilitator or medium of exchange. Menger here opposes what has been called "The State Theory of Money" according to which the value of money rests upon the authority of the highest civil power, not upon the estimation of commerce.[13]

However, it is fair to say that princes, rulers, and presidents have seen the debasement of money as an important means of improving their financial position. Historically, governments have taken to themselves certain powers over the commercially selected money of the time. One of these

powers, a version of which is found in our own constitution, is the mintage power. If a government has a power to [13] mint coins it has a power which, in its best sense, is intended to act as a limitation on fraud. The government weighs out so much of the commercially selected money metal. It then stamps the weight of that metal upon the coin. By minting accurately weighed and assayed coins the government helps to protect recipients of the coins against fraud and deceit. In a sense, the mintage powers are intended to protect those who use them against the need for weighing and assaying them. However, it is well known that kings have never been content to merely coin, but instead have usually clipped, cut, and debased the very coins which they were supposed to be guaranteeing. Such clipping was a means to greater fiscal strength on the part of the ruler concerned. Nevertheless, the process of clipping was usually evident to recipients of the coins and the obtaining of revenues by this method was thus curtailed.

**B. Power to Issue Money Substitutes**

Much later governments obtained the power to issue redeemable notes which when presented to the government treasury, entitled the bearer to money metal or specie promptly delivered. Economists generally called this process of converting such paper into money metal, redemption, thus entitling such paper bills as "redeemable". Redeemable paper bills were often called "certificates" because their face contained certifying language which attested that an amount of money metal was available to the bearer upon presentation. Economists also have referred to redeemable currency of this sort as full "money-substitutes" because they were immediately payable in hard money, coin or bullion. Historically, the issuance of redeemable paper money was not particularly ominous because it was issued as a more convenient way to complete commercial transactions than the actual carrying or exchanging of money metal.

### C. Fiat Standard

Over time, modern governments obtained yet an additional right to [14] issue paper notes. These paper notes however are referred to by economists as irredeemable paper money. They are entirely different in character from the redeemable paper money referred to above. The proffering of irredeemable paper currency by possessors of it did not entitle the proffering party to money metal from the governmental authorities. Such paper was and is regarded as inconvertible. There is no redemption of it possible. There are no metal bars or bullion coins to be had for it from the government treasury. Thus the state issued irredeemable paper money is described by economists as "fiat money". The term, of course, is derived from the fact that it is and was issued by mere decree (fiat) which decree commands all citizens to receive it. The value of fiat currency, if indeed it retains any in the estimation of the citizenry, is not derived from bullion or specie backing, but is dependent upon state edict and qualification as well as upon its general supply.

### D. Inflationism

Inflationism is described by economists as "that monetary policy which seeks to increase the quantity of money." Such a policy of increasing the quantity of money is extremely difficult if not impossible under a commercially ordained gold standard. Hard money, either gold or silver, cannot be increased in quantity except by expensive mining. Therefore, there are natural economic limits upon the increase in the quantity of such metal, and therefore, natural limits upon the increase in quantity of such metals when they are used as money. However, with the coming of fiat money, the quantity of currency can be increased much more easily. This is not to say that such an increase is not without its consequences. Fiat money also obeys the rules of supply and demand. If there is a huge increase in the

supply of fiat currency, or in demand deposits which are simply bookkeeping entries showing that certain fiat money exists, then the results will be that goods **[15]** prices will rise, that is, the value of each monetary unit will diminish. Under systems of hard money, such wide spread periods of prolonged rising prices cannot occur. Even under systems which operate on the basis of redeemable paper money, citizens who want to can redeem their paper currency for hard money whenever the governing authorities issue paper inprovidently.

In the latter stages of hyperinflation, when the state continues to issue unbacked fiat currency, even the threats of the state against those who refuse the currency, will not be enough to make it acceptable. When the demand for such fiat currency continues to decline, there will be what economists call "a flight to real values," that is, holders of money will abandon it in efforts to obtain real goods. When such a flight to real values occurs, the state issued money and its purchasing power will completely collapse. Modern times illustrate such collapses, namely in Germany and France, but also in the case of our own continental currency.

## IV. CENTRAL BANKING

### A. Banking in General

The business of banking is usually regarded as falling into at least two distinct branches: the brokering of money lent to the bank by depositors to those who wish to borrow it, and the creation of credit by the issuance of bank notes or by the creation of deposit accounts usually referred to as demand deposits.[15] Economists regard the second function, that of so-called credit creation as the more economically significant of the two functions for purposes of understanding the value of money. If money is first deposited by a person and then that same money is lent to another there is no necessary increase in the supply or availability

of money or credit. However, if a bank issues bank notes which are unbacked, that is, not covered by money, then new money-like instruments have been put into the hands of bank customers who will pass them to others in the course of exchange. **[16]** Such bank notes must certainly be regarded by economists as money. A later development in the banking field was the use of current accounts called demand deposit accounts with which to make loans. Bank notes gradually were replaced by demand deposit accounts.[16] Both of these traditional banking functions were accomplished by private banks through most of our economic history.

Because the bank notes that were issued under this system were always redeemable, a holder of such notes could present them immediately for gold or silver bullion or coins. Such a prospect of redemption worked as a check upon the bank issuance power of private banks. If a bank were to make excessive note issues, and those notes were presented to it, its inability to pay hard money would be a signal to depositors that it was not economically viable.

### B. Central Banking

Central banking has always meant the involvement of the state or government in banking activities. Economists generally describe central banking as that banking which results in the government granting a monopoly of bank note issuance or demand deposit creation to certain member banks. Experiences in Britain, Germany, and United States show that the creation of such central banks means that government effectively controls the volume of money and credit through them.

### C. Central Bank Purposes

At their inception central banks are usually created for the purposes of establishing a flexible currency and credit

system and in order to protect against the recurrence of serious financial crises. However, it is clear from historical evidence that central banks have actually added to the uneven, unpredictable, and erratic course of economic affairs. Instead of preventing financial crises central banks have often precipitated and/or maintained them.

**[17] D. U. S. Experience—The Federal Reserve System**

The bill establishing Federal Reserve Systems was signed into law in December, 1913. The purposes of the Federal Reserve Act have been summarized as follows:

> "(1) The establishment of a national clearing house for bank checks;
> (2) The creation of a flexible currency system;
> (3) The establishment of a more flexible credit system which could be adjusted to meet the needs of the business community."[11]

For the first time since the American Revolution a governmental body, the Federal Reserve Board, was specifically granted the control of the supply of money and credit. The Federal Reserve System had all of the hallmarks of a central bank. It should be pointed out that although the system's original purposes were modest in scope and objective ". . . since 1913 more than 100 amendments to the Act have gradually shaped the Federal Reserve System into a powerful arm of government which manages the people's money and credit. Today its primary purpose is to finance the federal deficit and conduct money and credit policies in accordance with the general plan of the administration in power."[12]

Since its creation it has not been able to meet the purposes which were set for it in the original Federal Reserve Act. The inability of the Federal Reserve Board to act and its encouragement of extravagant credit expansion made the 1920-22 depression more severe than all preceeding de-

pressions. The depression of 1929-40 was made much deeper by an inept federal money policy. The recessions of 1948-49 1953-54, 1957-58, 1960-61, 1970-71, 1973-75, and later recessions were not avoided even though the federal reserve possessed considerable ability to accelerate and decelerate credit expansion through its various tools of open market transactions and discount rates.

Overall the effects of the Federal Reserve Board on orderly economic activity has been detrimental. Boom prosperity, full employment have been pursued **[18]** through the expansion of money and credit, contracyclical policy has been attempted, but the result has been the variation of the supply of money and credit to such a degree that the value of money has been uneven, unstable, and unpredictable.[19] Commenting about the great depression, for instance, a noted economist Dr. Benjamin Anderson said that the great depression had its beginning in the burst of credit expansion by the Federal Reserve System in 1924-25 and again in 1927-28. Wtihout these inflationary adventures the stock market boom of 1928-29 could not have developed and the ill-fated crash would not have occurred.[20]

**[19] FOOTNOTES**

[1] Ludwig von Mises, *The Theory of Money and Credit* (New Haven: Yale University Press, 1953), p. 29.

[2] Perry L. Greaves, Jr., *Understanding the Dollar Crisis* (Boston: Western Islands, 1973) p. 142.

[3] Mises, p. 31.

[4] Mises, p. 32.

[5] Mises, p. 32.

[6] Mises, p. 33.

[7] Mises, pp. 35-36.

[8] Mises, p. 198.

[9] Hans F. Sennholz, *The Age of Inflation* (Boston: Western Islands, 1979), p. 13.

[10] Sennholz, pp. 15-17.

[11] Mises, p. 139.

[12] Carl Menger, *Principles of Economics* (Glencoe, Illinois: The Free Press, 1950) pp. 257, 261 & 262.

[13] Mises, p. 464.

[14] Mises, p. 219.

[15] Mises, p. 261.

[16] G. C. Fite & J. E. Reese, *An Economic History of the United States* (Boston: Houghton Mifflin Company, 1965) p. 475.

[17] Fite & Reese, p. 485.

[18] Sennholz, p. 111.

[19] Sennholz, pp. 115-119; see also Murray Rothbard, *America's Great Depression* (Princeton, New Jersey: D. Van Nostrand, 1963).

[20] Benjamin Anderson, *Economics and the Public Welfare* (Princeton, NJ: D. Van Nostrand, 1949) p. 113 et seq.

**[20]** In addition to the above true facts, I, John A. Sparks, being first duly sworn, depose and say that:

(1) I am a citizen of the Commonwealth of Pennsylvania and the United states of America, currently residing at 330 W. Main Street, Grove City, Mercer County, Pennsylvania, and that I am over 21 years of age and of sound mind, disposing memory and understanding, and therefore competent to testify under the laws of the Commonwealth of Pennsylvania.

(2) I am currently an Associate Professor of Business Administration and History at Grove City College,

Grove City, Pennsylvania (see "Qualifications" above).

(3) I am currently engaged as an authority on monetary economics by Richard L. Solyom, defendant and counter-plaintiff in the above-captioned matter.

(4) If I am called upon to testify in this matter I would give expert opinion that the facts in the above affidavit, on the subject of Monetary Theory and History are true.

/s/ John A. Sparks
JOHN A. SPARKS

BEFORE ME, the undersigned authority in and for the said County of Mercer and Commonwealth of Pennsylvania, personally appeared, JOHN A. SPARKS who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing AFFIDAVIT are true and correct to the best of his knowledge, information, and belief.

SWORN TO and subscribed before me,
this 27th day of November 1981

/s/ Janice L. Steen
Notary Public

Janice L. Steen, Notary Public, Grove City Boro, Mercer County. My Commission Expires Aug. 6, 1984. Member, Pennsylvania Association of Notaries.

**DEFENDANT'S EXHIBIT NO. 2**

**Affidavit of Philip D. Bradley**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56,182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

vs.

RICHARD L. SOLYOM, et al., *Defendants*

RICHARD L. SOLYOM, *Counter Plaintiff*

vs.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter Defendant*

**AFFIDAVIT OF PHILIP D. BRADLEY**

STATE OF NEW YORK
COUNTY OF CLINTON, ss

I, Philip D. Bradley, make oath that the following facts are true: *viz.*,

I, Philip D. Bradley, am over twenty-one years of age, am competent to testify under the laws of the State of Maryland, and I have personal knowledge of the contents of this Affidavit.

I am an economist, and since 1950 I have supplied a consulting and advisory service in Washington, D.C. on economic matters. Prior to establishing my consulting practice I obtained a Doctor of Philosophy degree in economics from Harvard University and taught courses in economics for several years at the Massachusetts Institute of Technology and at Harvard Univerity. A *vita* is attached to this Affidavit.

Counsel for defendant has asked me to answer a series of questions concerning the appropriation by the state of private property, just compensation, redeemable currencies, and fiat money.

For a period of approximately fifteen years this range of subject matter was of great professional interest to me. While a member of the department of economics faculty at Harvard University, I gave two courses designed to examine the reasons why the economies of certain nations remained in a backward or underdeveloped condition. My analytical work on this problem was supplemented by many months of research in various underdeveloped nations, particularly those in Latin America. My research was financed by grants from the Guggenheim Foundation, Harvard University, and the Department of State of the United States. In searching for the reasons why the economies of many of these countries failed to develop, my attention gradually focused on the relationship between the taking of private property by these governments and the rate of economic growth. Detailed investigation revealed that in case after case expropriation of private property was [2] in fact nothing more than disguised confiscation. In earlier years the expropriation policies of these governments were often beyond reproach. The value of appropriated property was accurately determined. Payment was made in money that could be redeemed in gold or silver. With the increasing use of fiat money in these nations, expropriation frequently deteriorated into confiscation. In many instances appropriated property continued to be fairly valued. But payment in fiat money or credit instruments mean that in reality all or part of the owner's property was confiscated. My conclusion was that the destructive impact of these practices on economic activity was a primary cause of underdevelopment.

In answering the questions put to me by defendant's counsel, I have changed the sequence in which the questions were raised and in some cases somewhat altered their form.

Question: As an economic analyst, how do you define "just compensation?"

Answer: In a market economy such as that which exists in the United States, transactions between parties requiring the determination of "just compensation" are relatively few.

For explanatory purposes consider a typical market economy situation. A person, corporate or individual, owns one or more assets. A plot of land is an example of such an asset. In a market economy an owner can exercise a number of options with respect to his assets. For example, he can choose among offers made by different buyers. If he concludes that an acceptable offer has not been made, he can reject all of them and retain his asset. As a condition of sale, he can specify the form of payment. [3] Thus he can require payment in other land, real estate, gold, silver or in yet other kinds of specific articles. Again, if he concludes that an acceptable form of payment has not been offered, he can reject each and every offer and retain his asset. In a market economy an asset owner has the options of selling or not selling and of accepting or rejecting any proffered form of payment. These options enable the owner to protect the value of his assets.

Under these typical market conditions "just compensation" is devoid of meaning. The asset owner is the sole judge as to whether a contemplated asset exchange will increase, decrease or leave unchanged the value of his assets. The owner decides any question as to the adequacy of the compensation and the acceptability of the form of payment. The issue as to what constitutes "just compensation" has no relevancy and does not arise.

Question: Under what circumstances does the question as to what constitutes just compensation arise?

Answer: Just compensation becomes an issue when an asset owner loses through government action one or more

of the options he would ordinarily enjoy in a market economy. Thus government might take from him the right to sell or not to sell a plot of land. Market determinations of land values are then replaced by court determinations. Determination of just compensation for an asset appropriated by the state becomes an effort to determine exactly what the asset would have brought if the state had not excluded all other buyers from the market. Any judgment of this kind is necessarily arbitrary. Inevitably a question arises as to whether or not the judgment is also just.

[4] Question: Assume that an asset owner agrees that the value placed on his asset by a court is in fact equal to its market value. Can one then conclude that an asset owner is justly compensated if he is paid this amount by the state?

Answer: No. That conclusion does not follow. In a market economy an asset owner can specify the form of payment he is prepared to accept. Throughout the history of the United States—a few years excepted—assets or articles of commerce in reality were exchanged against other assets or articles. This was obviously the situation when the seller accepted payment in gold or silver coins, as in the case where a plot of land was paid for in gold or silver coins of a stated weight. But the nature of the exchange was not altered when the seller accepted payment in whatever currency was designated legal tender at the time of the transaction. In that event the currency was redeemable in gold or silver. In effect the currency was a warehouse receipt for a stated amount of gold or silver. Precisely the same relationship existed when an asset or other article of commerce was exchanged for the promissory notes frequently issued by private banks in the 19th century. A note was a promise by a named bank to pay the bearer of the note a stated number of ounces of gold or silver. Here, again, market transactions reduced to exchanges of assets or articles.

The basis of market exchanges was completely revolutionized in 1968 when the Congress of the United States severed the connection between Federal Reserve Notes and silver. These notes became mere IOU's, and they now enjoy the same status as the fiat monies issued by various other nations. A seller who accepts payment in Federal Reserve Notes does not thereby acquire a claim to another asset or article of commerce, that is, silver. As indicated [5] previously, in a market economy the seller can decide for himself whether or not to exchange his assets for IOU's issued by the Federal Reserve. However, the situation is completely altered when through eminent-domain proceedings the state attempts to compel an unwilling seller to take Federal Reserve Notes. Such proceedings do not provide just compensation for the owner.

Question: You referred to the notes issued by private banks in the last century. Why did the United States Congress take this right from the private banks?

Answer: Congress justified its reservation of the note issue to government on several grounds. (1) Congress found that on numerous occasions private banks had failed to create reserves of gold or silver adequate for redemption of the notes presented for payment. Thus the bearer of the note might discover that his note was worthless. Or, he might be required to settle for less than the note's face value, or to accept payment over a period of months or years. In brief, Congress found that the private note issue depreciated in value. (2) Congress also found that notes issued by private banks lacked general acceptability. A seller siuated in Chicago might be reluctant to accept at face value a note issued by a Boston bank. If he did accept the note, he incurred collection costs which reduced the value of the note. (3) Congress found that the public was unwilling to hold private bank notes for more than the time required to redeem them. That is, given the prospect that notes might not be redeemable at full face value, note

bearers were unwilling to hold them. In more general terms, private bank notes failed to pass one of the tests for determining sound money: they were not a good store of value. For these and other reasons Congress found that the issuance of private bank notes did not facilitate interstate commerce but, to the contrary, placed a [6] burden upon it. Congress concluded that by reserving the note issue to the government, it could correct the problems created by the issuance of private bank notes.

Question: In reply to a previous question you stated that an unwilling seller in eminent-domain proceedings would not be justly compensated if compelled to take payment in Federal Reserve Notes. Would you state the basis for your conclusions?

Answer: In this suit the answer to the question as to whether the defendant is justly compensated depends upon the form of payment. Payment in Federal Reserve Notes would not constitute just compensation.

Defendant is prepared to hold the land the state has appropriated. The defendant is also willing to accept compensation in gold or silver. He would accept payment in other land or real estate of equal market value if such assets could be identified and acquired by the state for transfer to him. In each of these cases the defendant would retain the assets noted. However, if under state duress he is forced to accept Federal Reserve Notes, he would not hold them. His decisions on these choices are the same as those that would be made by any economically rational person. Defendant's willingness to hold the several assets or articles of commerce noted and his unwillingness to hold Federal Reserve Notes demonstrates a basic difference between the Notes and the assets or articles identified.

In the absence of eminent-domain proceedings the state cannot purchase with the fourteen hundred dollars it would force upon defendant a new parcel of land equal in market

value to the land taken from defendant. The state's inability is not traceable to any special or unusual characteristics of defendant's land. Rather the inability derives from the primary characteristic [7] of Federal Reserve Notes, namely, the rapid rate at which they depreciate in exchange for assets or articles of commerce.

Similarly, with the fourteen hundred dollars of Federal Reserve Notes the state would force upon him, defendant cannot purchase a tract of land with a market value equal to that of the land taken. Unless he prevails in this case, defendant's asset position will decrease in value as a direct consequence of the state's appropriation.

Question: Permit me to suggest a solution to the problem of asset loss. Suppose that counsel for state hands defendant fourteen hundred dollars in Federal Reserve Notes. Suppose further that defendant then picks up the telephone and places an order to buy fourteen hundred dollars of gold or, if he prefers, silver. Would you agree that in this way defendant's asset position can be protected?

Answer: The purpose of the measures described is to minimize defendant's loss, not to prevent it. Whether a "small" loss would satisfy the canons of justice, whereas a "large" loss would not, is a question that falls outside the boundaries of economic analysis. However, there can be no doubt that the actions you describe do not produce just compensation. Moreover, the conclusion that defendant can protect his asset postion in the way suggested rests on the unstated assumption that defendant through a hurried telephone call can convert the Notes into gold without risk or hazard. The plausibility of this assumption would be somewhat increased if defendant were in fact an expert on the functioning of gold markets. But in the absence of such expert knowledge, defendant risks adding to the losses already inflicted upon him by the state.

[8] The means you suggest through which defendant can protect himself against further loss bring us full circle to

the findings of fact made by past Congresses about the issue of notes by private banks. Congress found that private bank notes depreciated in value, lacked general acceptability, and were an unreliable store of value. These defects were traceable in large part to the practice of issuing more notes than could be redeemed in gold or silver. Congress concluded that the issuance of private bank notes impeded the conduct of interstate commerce. The effect of the remedial legislation adopted was to reserve the issuance of notes to the federal government and to provide that notes be redeemable in gold or silver.

The state now demands that defendant take payment in notes that exhibit exactly the same defects that Congress found in private bank notes. Moreover, these defects are traceable to the government's long-established and well known practice of over issuing notes. The loss that would be incurred by defendant if forced to take Federal Reserve Notes is an example of the kind of burden past Congresses found were imposed on commerce by private bank notes. Defendant's requested remedy—that he be compensated in gold or silver—is identical to the remedy adopted by Congress when it provided for the redemption of government notes in gold or silver.

Summary: As an economist my conclusion is that in compelling defendant to take Federal Reserve Notes in payment for land it has appropriated, the state has stepped across the clearly visible line which separates expropriation from confiscation. Payment in Federal Reserve Notes does not constitute just compensation.

[9] For a number of years I taught my students that the confiscatory taking of property—through payment in fiat money—which impeded the economic development of Latin American nations could not occur in the United States. My reason was that under our Constitution the federal government cannot issue fiat money or its equivalent. Of course as an economist I was not an authority on what is

or is not constitutionally permissible. Here I relied on the opinions of the several professors in the Harvard Law School with whom I discussed this question in depth on many occasions. Thomas Reed Powell, professor of constitutional law, assured me that I would be entirely correct in teaching that the Constitution prohibited the issuance of fiat money. His judgment was identical with that of Edward Morgan and other professors of law. This supported my conclusion that differences in law among nations produced differences in rates of national economic development.

/s/ Philip D. Bradley

State of New York
County of Clinton, ss

On this 24th day of November in the year 1981, before me, Grace M. Bowers, a Notary Public and in for said state, personally appeared Philip D. Bradley known to me to be the person who executed this Affidavit and acknowledged to me that he executed the same for the purposes therein stated, and that the contents thereof are true.

/s/ Grace M. Bowers
GRACE M. BOWERS

Notary Public in the State of New York. Qualified in Clinton County. My Commission Expires March 30, 1983.

**[10]** PHILIP D. BRADLEY 202-554-5522
South 601 Harbour Square
530 N Street, S.W.
Washington, D.C. 20024

**Philip D. Bradley—Vita**

*Academic Background*

AB Lawrence University

AM Harvard University
Ph.D. Harvard University

Area of interest in graduate school: economic analysis and mathematics

Member of Department of Economics Faculty, Massachusetts Institute of Technology, two years

Member of Department of Economics Faculty, Harvard University, ten years

Visiting professor, graduate school, University of Virginia

Courses of instruction taught at Harvard University: principles of economics, economic systems of underdeveloped nations, international economic problems, economic theory

Awards and grants: Phi Beta Kappa, Saltonstall Fellowship, Guggenheim Fellowship, Harvard University Research Grant, State Department Research Grant

*Professional Experience*

Established office in Washington, D.C. in 1950
Principal professional activity: consulting and advising on economic matters

Clients: corporations, law firms, individuals, universities, foundations

Principal service provided: application of economic analysis to problems of interest to clients

From 1977 consulting and advisory work limited to situations involving the public interest

**DEFENDANT'S EXHIBIT NO. 3**

**Affidavit of Dr. John A. Sparks**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56, 182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

v.

RICHARD L. SOLYOM, *Defendant*

RICHARD L. SOLYOM, *Counter-Plaintiff*

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter-defendant*

**AFFIDAVIT OF DR. JOHN A. SPARKS**

STATE OF PENNSYLVANIA
COUNTY OF MERCER

I, JOHN A. SPARKS, make oath that the following facts are true:

1) I am a citizen of the Commonwealth of Pennsylvania and the United States of America, currently residing at 330 W. Main Street, Grove City, Mercer County, Pennsylvania, over 21 years of age and being of sound and disposing mind, memory, and understanding, I am competent to testify under the laws of the Commonwealth of Pennsylvania.

2) I am currently an Associate Professor of Business Administration at Grove City College, Grove City, Pennsylvania. (See curriculum vita as Exhibit "A".)

**[2]** 3) I am currently engaged as an authority in monetary economics by Richard L. Solyom in this matter.

4) If I am called upon to testify in this matter I would give expert opinion that the following facts are true:

I. Monetary theorists recognize a clear distinction between redeemable and irredeemable paper and currency.

a. *Redeemable paper money* is paper, which when presented to the government treasury, entitles the bearer to money metal or specie promptly delivered. Economists call this process of converting such paper into money metal, redemption, thus the titling of such paper bills as "redeemable." Redeemable paper bills are often called "certificates" because their face contains certifying language which attests that an amount of money-metal is available to the bearer upon presentation. Economists also refer to redeemable currencies as full "money-substitutes" because they are immediately payable in hard money, coin or bullion. Historically, redeemable paper money was issued because it was a more convenient way to complete commercial transactions than the actual carrying and exchanging of metal.

b. *Irredeemable paper money* is entirely different from redeemable paper money in character, value and origin. The proffering of irredeemable paper currency does not entitle the proffering party to money-metal from the authorities. Such paper is inconvertible. There is no redemption of it possible. There are no metal bars or bullion coins to be had for it from the government treasury. Thus state-issued irredeemable paper money is described by economists as "fiat money." The term, of course, derives from the fact that it is issued by mere decree [3] (fiat) which decree commands all citizens to receive it. Its value, if indeed it retains any in the estimation of the citizenry, is not derived from buillion or specie backing, but is dependent upon state edict.

II. The monetary history of the United States and of other western countries abundantly illustrates that men of

affairs in their commercial dealings, markets, and trading agreements, in fact, in their legislative chambers, recognize and act upon the distinction made by theoretical economics between redeemable and irredeemable paper money.

WHEREFORE SAYETH NOT.

/s/ John A. Sparks
JOHN A. SPARKS
*Affiant*

**[4] CURRICULUM VITA**

JOHN A. SPARKS

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EDUCATION

1969 J.D., University of Michigan Law School, Ann Arbor, Michigan

1966 A.B., Grove City College, Grove City, Pennsylvania (Economics)

EXPERIENCE

1976-present Assoc. Professor—Business Administration, Grove City College; Director, Institute on Public Policy and Private Enterprise, Grove City College; and Partner, Bogaty, McEwen & Sparks, Attorneys at Law, Grove City, Pennsylvania (General Practice)

1978-present President, Public Policy Education Fund, Inc., a non-profit research corporation which issues special reports on public policy issues.

1971-1976 Chairman, Division of Economics and Business Administration, and Associate Professor, Hillsdale College, Hillsdale, Michigan
Director, Hillsdale Summer Institute in Political Economy, Hillsdale College, Summers 1973-1976
Director—Legal and Paralegal studies
Private practice of law—sole practitioner

1969-1971 Member of the Division of Economics and Business Administration—Assistant Professor
Associated with the law firm of William MacRitchie, 10 Budlong Street, Hillsdale, Michigan, on a part-time basis in general practice of law including wills, contracts, and litigation

HONORS, AWARDS AND FELLOWSHIPS

While teaching at Grove City College;
One of twenty participants in Harvard Law School Conference on Criminal Justice, Sponsored by Liberty Fund, Spring, 1977.

[5] While teaching at Hillsdale College:
Outstanding Young Men in America, 1971 & 1972
Outstanding Educators of America, 1972
Named "Professor of the Year" by graduating seniors—1973
Summer Writing Grant—Liberty Fund, Indianapolis, Indiana, for work on the theory of retributive justice, 1975
Named R. C. Hoiles Fellow—1975-1976

While attending the University of Michigan Law School:
H. B. Earhart Foundation Fellow—H. B. Earhart Foundation, Ann Arbor, Michigan

While attending Grove City College:
Ingersoll Foundation Fellow
Highest Honors in Economics
Member, Omicron Delta Kappa
Named to Who's Who Among College and University Students—1965-66
Selected Omicron Delta Kappa "Senior Man of the Year" by faculty and student body

PROFESSIONAL AND OTHER ORGANIZATIONS

Member, State Bar of Michigan (passed Bar November, 1969)
Member, State Bar of Pennsylvania, Mercer County Bar and American Bar Assoc.
Trustee, John P. Curran Foundation (an educational foundation), Wilmington, DE
Trustee, Hillsdale Community Hospital, 1974-76, Secretary, 1976
Member, Textbook Evaluation Committee, America's Future, Inc., New Rochelle, New York, 1974-present

PUBLICATIONS

Book Reviews:

*Frederic Bastiat, A Man Alone*, George C. Roche, III, Hillsdale Magazine, October, 1971.

"The Wisdom and Restraint of Thomas Malthus," Review of *Homage to Malthus*, Jane Soames Nickerson, *University Bookman*, Spring, 1978.

"A Well Considered Return to Punishment," Review of *Punishing Criminals*, by Ernest van den Haag, University Bookman, Spring, 1978.

Appearing in *Textbook Evaluation Report*, America's Future, Inc., New Rochelle, New York:

*Private Business Enterprise,* Hale A. Newcomer, 1975

*Economics: Concepts and Institutions,* S. W. Helburn, et al., 1976

*Economics, Principles and Applications,* John W. Kennedy and Arthur R. Olsen

*Elements of Economics,* Wallace C. Peterson

*Economics, Its Nature and Importance,* G. Carl Wiegand

[6] *Economics Today,* Roger Leroy Miller

*Economics: Principles & Policy from a Christian Perspective,* Tom Rose

*The Gold Clause* by Henry Mark Holzer, *Freeman,* November, 1980.

II. Articles:

"Monopolist, Can He Charge Anything He Wants," December, 1971, *Freeman.* Reprint of above in Reader's Review, National Research Bureau, 1972

"American Education at the Crossroads," May, 1972, *The Eleusis.*

"Physician Maldistribution?" *Private Practice, Journal of Socio-Economic Medicine,* September, 1972.

"Those Fellows with Black Hats—The Speculators," August, 1974, *Freeman.*

"The Legal Standing of Gold—Contract v. Status," Chapter 5 in *Gold is Money,* ed. Hans F. Sennholz (Westport, Connecticut: Greenwood Press, 1975).

"State Withdrawal of Ratification of a Proposed U. S. Constitutional Amendment—Memorandum of Law" in *Yes . . . We Can Rescind the Equal Rights Amendment,* (booklet), ed. Elaine Donnelly (Detroit, Michigan: Michigan Stop E.R.A. Committee, 1975).

"The Reconstruction of the Criminal Law—Retribution Revived," *Journal of Christian Reconstruction,* Winter 1976-1977, Vol. III, No. 2

"Medical Myth # 1, There is a Physician Maldistribution Crisis," *Private Practice, Journal of Socio-Economic Medicine,* Vol. 9, No. 10, October 1977.

"World Hunger," November, 1978, *Freeman.*

"The Nestle Controversy—Anatomy of a Boycott," Fall, 1979, published by Public Policy Education Fund, Inc. (25,000 copies have been distributed by Nestle Co. to church and health groups world-wide).

"The Baby Milk Controversy," August, 1980 *Food Policy* (British) IPC Science and Technology Press, Ltd.

"Are Multinationals a Menace to the Third World?" Fall, 1980, published by Public Policy Education Fund, Inc.

"Nineteenth Century Economic Progress," January, *Freeman,* Foundation for Economic Education.

Appearance, "Channel to Pittsburgh," KDKA-TV, Pittsburgh, Panelist on subject of "Labor Unions in the 1980's," (Aired November 12, 1980).

III. Editorial:

Bi-weekly columnist on economics and public policy for *The Freedom Newspapers,* a chain of 25 newspapers including the *Santa Ana Register, The Colorado Springs, Gazette Telegraph,* the *Lima, Ohio News.* (1975-1976)

[7] IV. Work in Progress:

Editing Clarkson N. Potter's "Argument Against the Power of Congress to Make United States Treasury

Notes a Legal Tender," Washington, D.C.: Gibson Brothers, Printers, 1871) with an "Introduction to the Legal Tender Controversy."

Preparing essay for publication on equality as a tenet of a modern secular creed. Tentatively titled—"Dissent from Equality."

V. Testimony:

Expert affidavit testimony on monetary theory and history presented to The United States Tax Court for petitioners in the case of Gordon B. Leitch, Jr., and Mary C. Leitch v. Commissioner of Internal Revenue, Portland, Oregon. (Docket # 12669-77)

COURSES TAUGHT

Principles of Economics
Government and Business
Labor-Management Relations
Business Law
Business Policy
United States Economic History
United States Constitutional History

PERSONAL DATA

Born, November 19, 1944, San Francisco, CA
Married and residing with wife, Marion, son, John Andrew and daughter Elizabeth Lee, in Grove City, PA
Pastimes include: tennis, raquet ball, writing, music
Church affiliation: Covenant Orthodox Presbyterian Church, Grove City, PA

**[8] AFFIDAVIT**

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MERCER, SS:

BEFORE ME, the undersigned authority in and for said County and Commonwealth, personally appeared, JOHN A. SPARKS who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing AFFIDAVIT are true and correct to the best of his knowledge, information, and belief.

/s/ John A. Sparks
JOHN A. SPARKS

SWORN TO and subscribed before me,
this 30th day of June, 1981

/s/ Janice L. Steen
Notary Public

Janice L. Steen, Notary Public, Grove City Boro, Mercer County. My Commission Expires Aug. 6, 1984. Member, Pennsylvania Association of Notaries.

**DEFENDANT'S EXHIBIT NO. 4**

**Affidavit of Dr. Elgin Groseclose**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56,182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*,

v.

RICHARD L. SOLYOM, et al., *Defendants*

RICHARD L. SOLYOM, *Counter Plaintiff*,

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter Defendant*.

**AFFIDAVIT OF DR. ELGIN GROSECLOSE**

STATE OF MARYLAND
COUNTY OF MONTGOMERY, to wit:

I, Elgin Groseclose, make oath that the following facts are true:

1. I am a citizen of the District of Columbia and of the United States, residing at 4813 Woodway Lane, N.W., Washington, D.C. 20016. I am over twenty-one (21) years of age, and am competent to testify under the laws of the State of Maryland and the District of Columbia.

2. Since 1944 I have been a financial and investment consultant, my firm that of Groseclose, Williams & Broderick of 1200 - 15th St., N.W., Washington, D.C. 20005. For a much longer time I have devoted my attention to monetary economics, with authorship of books and testimony before committees of Congress on monetary policy; and in 1961 founded, and presently [2] serve as executive director of, the Institute for Monetary Research, Inc. in Washington. My curriculum vitae is attached hereto as Exhibit A, and incorporated by reference herein.

3. I have been engaged by Defendant Richard L. Solyom as an authority in monetary history and economics in the above-captioned case.

4. If called to testify in said case on behalf of Mr. Solyom, I would give my expert-opinion that the following facts *inter alia* are true: *viz.*,

(a) The "dollar" referred to in the U.S. Constitution, antedating the establishment of monetary standards by U.S. law, was the Spanish milled dollar, equivalent to eight reales and sometimes known as "pieces of eight", which circulated freely in the colonies and was a commonly accepted standard of value. The name derived from a coin struck by Count Schlick of Bohemia, then feudatory of the Spanish crown, and known variously as Schlicktenthalers or Joachimsthalers (from the locality of their coinage) afterward abbreviated to thalers. The original composition of the thaler was 407 fine grains silver (1507), but from successive recoinage and alteration was in 1785 of a standard weight of 374.87 fine grains, according to the report on "Coins" by Thomas Jefferson. The weight of the coins in circulation at the time the Constitution was adopted, however, was found by assay of Alexander Hamilton the first Secretary of the Treasury, to vary from 368 fine grains to 371.5 fine grains with an average weight of 371-¼ fine grains. This weight was adopted for the U.S. silver dollar at the establishment of a mint in 1792.

Due to the shortage and deteriorated condition of the English circulation in the American colonies, and the prohibition against the export of coinage from England from 1686, a proclamation of Queen Anne in 1704 gave currency in the Colonies to the Spanish dollar and **[3]** its fractions, which henceforth became lawful current money in British America. On July 6, 1785, the Spanish dollar was adopted by the Conti-

nental Congress as its integer of moneys and accounts, and this became the source of reference to the dollar in the U.S. Constitution. (A subsequent resolution of August 8, 1786, fixed the dollar at 375.64 fine grains silver; however, no coinage was undertaken.)

(b) From the perspective of monetary economics, legal-tender paper-money irredeemable in either gold or silver is qualitatively different from either redeemable legal-tender paper-money or from specie.

(c) Under contemporary conditions, the irredeemability of legal-tender federal reserve notes is the effective cause of the general increase in prices and depreciation of the value of the circulating media throughout the United States economy.

(d) The contemporary condition of irredeemable, legal-tender federal reserve currency in the United States has parallels and omens (in monetary-economic terms) with the condition that obtained in France under the regime of John Law in the early eighteenth century, and that directly contributed to the destruction of the French economy and, ultimately, to the French Revolution.

(e) Based on both monetary theory and history, continued use of irredeemable, legal-tender paper-money in this country is bound to destroy the American economy.

(f) By various acts Congress has practically abdicated its authority to coin and regulate the value of money to a quasi-independent institution, the Federal Reserve System, of which its powerful functioning arm is the Open Market Committee, composed of 12 persons whose independence is assured for 7 by appointments for 14 years, and indefinite tenure for the others.

[4] By laws presently in effect, most notably the Depositary Institutions Deregulation and Monetary Control

Act of 1980, the System has power to debase the standard of purchasing power and throw into doubt all future monetary values through the issuance of unlimited amounts of irredeemable legal tender currency against practically any kind of collateral it chooses to accept including obligations issued or guaranteed by foreign governments, regardless of the political or economic stability of such governments.

Further Affiant sayeth not.

/s/ Elgin Groseclose
ELGIN GROSECLOSE, Affiant

I hereby certify that on 24th June, 1981, before me, a Notary Public for the District of Columbia, personally appeared Elgin Groseclose, and made oath in due form of law that the matters and facts hereinabove set forth are true.

/s/ Helen L. Coleman
Notary Public

My Commission expires August 31, 1982.

**[5] EXHIBIT A**

**Elgin Groseclose**

Elgin Groseclose, since 1944 head of a Washington firm of financial analysts and consultants (presently Groseclose, Williams & Broderick), has testified frequently before committees of Congress on monetary and fiscal policy and foreign aid; and is respected by the courts for his valuations of complex property interests.

His work in the field of monetary economics is well known. His *Money and Man*, first published in 1935, is presently

in its 4th edition; his most recent work is *America's Money Machine*, a revised and updated history of the Federal Reserve System, first published in 1966, and republished in October 1980. He is also the author of several monographs on money, among which are The Decay of Money; The Silken Metal—Silver; Monetary Uses of Silver. His interest in monetary questions began shortly after World War I, when he taught in a mission school in Iran and did relief work in the Soviet Caucasus and saw the effects of a policy of currency debasement. During World War II he was appointed Treasurer-General of Iran by action of the Iranian parliament, with a main responsibility that of curbing the war-time inflation. This he attacked by returning gold to the market place, a policy subsequently adopted throughout the Middle East War Theatre. In 1961 he founded the Institute for Monetary Research, Inc., dedicated to the integrity of the monetary system, which he continues to serve as executive director.

From 1932 to 1935 Dr. Groseclose was on the faculty of business administration in the University of Oklahoma: he has also lectured on banking and finance at the City College of New York, and on investment analysis in the Graduate School of the American University in Washington, D.C.

Dr. Groseclose lives with his wife in Washington; they have four daughters, ten grandchildren and three great grandchildren. He is an Episcopalian, a member of the Cosmos Club, a founding member of the National Economists Club, as well as the National Association of Business Economists.

**DEFENDANT'S EXHIBIT NO. 7**

**Affidavit of John Exter**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56,182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

v.

RICHARD L. SOLYOM, *Defendant*

RICHARD L. SOLYOM, *Counter-Plaintiff*

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter-defendant*

**AFFIDAVIT OF JOHN EXTER**

STATE OF NEW JERSEY
COUNTY OF MORRIS

1) I am John Exter of 290 Boulevard, Mountain Lakes, New Jersey, 07046. I am a citizen of the State of New Jersey and of the United States, am over 21 years of age, and am competent to testify under the laws of the States of New Jersey and Maryland. Defendant and counter-plaintiff, Richard L. Solyom has retained me as an expert witness to testify in the above captioned case on the subjects outlined hereinafter in paragraph 3.

2) I received my bachelor's degree in 1932 from the College of Wooster, and a master's degree in 1934 from the Fletcher School of Law and Diplomacy where one of my fields was international finance. I took further graduate work at Harvard University in money and banking. I taught economics at Harvard. In November, 1945, I became an economist at the Board of Governors of the Federal Reserve System specializing in the Far East. In January,

1947, the Board appointed me to the Joint Philippine-American Finance Commission in Manila. The Commission presented its report to President Truman in June, 1947. It recommended a central bank, so in January, 1948 I returned to Manila at the invitation of the Secretary of Finance of the Philippines to help draft legislation for a new Central Bank of the Philippines. In December, 1948, Ceylon invited me to Colombo as adviser to the Minister of Finance on drafting legislation for a new Central Bank of Ceylon. On July 1, 1950, I became its first Governor, a post I held for three years. [2] In 1953-4 I was division chief for the Middle East at the World Bank. From 1954 to 1959 I was Vice President of the Federal Reserve Bank of New York in charge of foreign operations for the entire Federal Reserve system. From 1959 to 1972 I was first a vice president and then a senior vice president of First National City Bank of New York (now Citibank) with responsibility for the bank's relations with foreign central banks and governments. Since 1972 I have been a private consultant in domestic and international money, (see Vita as Exhibit A).

3) a. Governments do not have the power to decide what money is, nor do economists. It is people in the marketplace who determine what kind of money they will use and hold. A government may make some kind of money legal tender, but it cannot force people to use and hold that money to the exclusion of other kinds of money that they like better. An economist may arbitrarily deny that gold is money and define money as only paper, but most people in the marketplace will remain totally unaware of his definitions, so will ignore them. Regardless of the current popular definitions by both economists and the Federal Reserve System itself that money is only paper, people have been running out of paper money into gold money for more than a decade, and that run will continue and accelerate simply because the printing of paper money is accelerating.

b. People the world over still use and hold paper currencies today only because they serve the standards of value and means of payment functions of money, but only a few so far have perceived that paper money does not serve the most important function of money: to be a good store of value. Indeed, any money that is not a good store of value will not survive; people in the marketplace will ultimately refuse to use and hold it. In the extreme case a government, or its central bank, will print so much of it as to cause hyperinflation, people will reject it altogether, and it will become worthless.

c. A good store-of-value money must be a commodity, one that is desirable, scarce, and fungible. Paper is a commodity, but is not a store of value at all; it is far too abundant. It did not become money in the first place because it had any commodity value, but because of the ink on it, and that ink had to spell out a promise to pay a precious metal commodity like gold or silver that was a good store of value. People also had to **[3]** be confident of the promise. They had to be sure the monetary authority would actually redeem the paper freely in gold or silver at a fixed price.

d. During most of American history the dollar has been a promise to pay gold or silver, sometimes, under bimetallism, either one or the other at a fixed ratio of, say, 16 to 1 in favor of gold. In 1879 we went on the gold standard only. In 1968 the U.S. Treasury ceased to redeem still outstanding silver certificates in silver dollars and the price of silver began to rise dramatically. Gold began its rise in 1933 when President Roosevelt raised its price from $20.67 to $35 an ounce and prohibited Americans from holding it. In March, 1968, major central banks and governments of the world ceased to redeem their currencies in gold at $35 an ounce for any private people whose laws permitted them to hold gold. A so-called "two-tier"-system developed in which the price of gold in the private market tier began

to trade at prices generally above the fixed official $35 price, while in the official tier the $35 price held because the treasury, through the Federal Reserve, continued to redeem dollars in gold for foreign central banks at that price. On August 15, 1971, however, President Nixon closed the gold window even to foreign central banks. All other central banks and governments were forced to close their gold windows, too, so the two-tier system ended and the price of gold began a dramatic rise in the free market in terms of all paper currencies.

e. Thus all currencies became irredeemable, what may be called IOU-nothing paper currencies, not a promise to pay anything at all. All became what is also called fiat money, money issued by government decree and declared by government to be legal tender (in the United States, for all debts public and private).

f. The resulting international monetary system is unprecedented. Paper currencies have often become irredeemable, but always before they were single, or a few, currencies, while most others remained freely redeemable in gold. When a single currency became irredeemable, in most cases it ultimately became worthless and disappeared, but in exceptional cases it became redeemable again and survived, like our own irredeemable dollar greenbacks of the Civil War, on which specie payments were restored in 1879.

g. There is today little prospect that all, or even the more important of the world's [4] currencies, could once again return to the gold standard, be made freely redeemable in gold at a fixed price. It is relatively simple and easy to restore the redeemability in gold of a single irredeemable currency that has not been irredeemable for too long, and is surrounded by currencies fully redeemable and on a healthy, working gold standard. But when all are irredeemable and the essential workings of a pure gold standard are all but forgotten by private people, and by the monetary authorities as well, it is next to impossible.

In the United States Congress would either have to abolish the Federal Reserve or stop it from doing what forced it to close the gold window in the first place: purchasing U.S. government securities or, for that matter, any paper assets at all. It would have to be restricted to buying and selling only gold on demand at a fixed price. Such a restriction would be so devastating to today's over-extended debt structure that the whole house of cards would come tumbling down, a collapse of credit. This is precisely what monetary authorities in the dollar and other currencies want desperately to avoid; it is almost unthinkable that they would deliberately precipitate it.

h. The world will probably get such a collapse anyway, for a whole world of irredeemable, IOU-nothing paper currencies is an impossible system. It cannot survive. It will break down in spite of all efforts by the authorities, simply because the pressures on central banks to print ever more of their IOU-nothings will prove irresistible. In the process economic activity around the world will shrink.

i. We can already see the general pattern.

(1) There is inflation, rising prices and costs, in all currencies without exception.

(2) Exchange rates are no longer fixed, but floating. Stable exchange rates became impossible once President Nixon closed the gold window. The floats have not been clean floats, but dirty. All central banks have intervened in the exchange markets regularly, by either buying or selling foreign currencies, and occasionally gold, in an attempt to influence, or even control, the exchange rates for their own currencies.

(3) There has been a flight out of all IOU-nothing paper currencies into gold that has caused its price to skyrocket from $35 an ounce in 1971 to more than
[5] $850 in January, 1980, and about $400 as this is written. There has been a comparable flight into other

things such as art objects, antiques, and a great variety of other collectibles.

(4) Both long and short term interest rates have soared and, most ominous of all, short term interest rates, in the 60s, 70s, and 80s, have periodically risen above the long to produce what is called an inverted yield curve, or a liquidity squeeze. Such a curve, or squeeze, puts relentless pressure on the illiquid debtors in the system, those who have borrowed short term and lent long term, particularly at fixed interest rates, as, for example, savings and loan associations have done. Debtors who consistently over time borrow short term and lend long term must ultimately become insolvent and go bankrupt, for they lose their liquid assets and must depend upon ever larger short term borrowings to meet their own short term obligations. In a liquidity squeeze they must pay more on these short term borrowings than they earn on their long term assets, so they lose money and ultimately exhaust their net worth. This is why it is a cardinal rule of finance not to borrow short and lend long. There has been a tremendous, unprecedented expansion of debt by illiquid debtors in all currencies, but particularly in the dollar, so there is now a debt burden in many currencies too heavy for illiquid debtors to serve and repay. As a result defaults and failures will increase and confidence in financial institutions and other illiquid debtors will erode. The authorities may stave off runs by providing deposit insurance, merging failing into stronger institutions, and other measures, but these only buy time. They do not solve the basic illiquidity problem. At some point people will begin a scramble for liquidity, a run out of illiquid into more liquid debtors and into gold, the ultimate liquid asset of the monetary system, the asset that in the judgment of people in the marketplace is the supreme store-of-value money. The scram-

ble will be strongly deflationary. It will produce lower prices and costs.

(5) No one can be sure of the response of the authorities to such a scramble, but the likelihood is that our own government will let budget deficits soar **[6]** and the Federal Reserve will create record amounts of its IOU-nothings by buying government securities to finance them. It will also attempt bail-outs of failing institutions, as the Monetary Control Act of 1980 gave it broad powers to do. By so doing it would hope to arrest the deflationary scramble for liquidity and reinflate. If it succeeds, the coming deflationary depression will be seen by historians as only a temporary interruption of the long inflation that began before World War II.

j. The world cannot return to a stable international monetary system based on the gold standard until a substantial part of the debt burden has been liquidated. But there are only two ways to liquidate an excessive debt burden. The first may be called the 1929-33 way: allow defaults and failures to run their course. The bankruptcy rate in many currencies is already rising markedly. Governments and central banks are unlikely, however, to permit the system to go this way. The consequences—depression, deflation, high unemployment—are too painful politically for governments to contemplate. So the more likely prospect is that the major central banks of the world will continue to run their money printing presses at ever higher rates until, one by one, they produce hyperinflation. Their IOU-nothing currencies will ultimately become worth nothing, as they say they are, in which case all debt denominated in them becomes worth nothing, too, and is wiped out. Governments and central banks will then start afresh, either with brand new currencies, or by knocking several zeros off the old. As people reject paper money they will take refuge principally in gold money. In effect, the market

will demonetize paper and monetize gold. In the end governments and central banks may be forced by popular demand to tie their new currencies to gold, and so restore the gold standard. But such a development, if it comes, is far in the future.

k. Meanwhile, because of the long continuing worldwide inflation, people in the marketplace have become increasingly reluctant to enter into long term money contracts, so bond, mortgage, and life insurance markets are gradually being destroyed. Speculation is increasing, government budget deficits are growing, real investment is slowing, world production and trade are shrinking, unemployment is rising, and a massive redistribution of wealth is under way, particularly from those who persist in holding paper IOU-nothings, [7] or obligations denominated in them, to those who hold gold and, to a lesser extent, silver. Economic, social, and political pressures are rising. Law and order are breaking down. We have come to this sad state of affairs primarily because governments and central banks, by refusing to accept the discipline of the gold standard, made it break down. It is an unparalleled tragedy for mankind.

l. I have warned of this developing tragedy for more than twenty years. I consistently warned governments and central banks, especially our own Federal Reserve, of the consequences of their blatant violation of the basic gold standard principle that a central bank should not create demand liabilities on its books against the purchase of paper assets like the securities of its own government, or those of foreign governments, or special drawing rights, instead of gold. In so doing it was borrowing short term, creating demand note and deposit liabilities payable in gold at $35 an ounce, and lending long term to governments. It was itself violating the cardinal rule of finance not to do so and would some day have to default on its obligations. By August 15, 1971, all central banks had

defaulted. For the past ten years I have devoted myself to advising private people how to protect themselves against the consequences of such unsound monetary policies.

m. I became a strong believer in the gold standard early in my adult life. In graduate school in economics at Harvard in the early 40s many of my teachers had become ardent followers of John Maynard Keynes. They taught that the gold standard was a barbarous relic, that it made no sense to dig gold out of the ground in South Africa and put it back in the ground at Fort Knox. They advocated deficit spending to revive the economy, and argued that the increase in government debt did not matter because we owed it to ourselves. Today we owe much of that debt to foreign central banks and other foreigners

I began to question the debt argument while still at Harvard. It seemed wrong, even immoral to me, that a government should be able to go on increasing its debt indefinitely while a private person or corporation could not. Why should government not be subject to the discipline of the marketplace when private people are?

I did not begin to see that the Keynesians were wrong about the gold standard until after World War II when I went to the Board of Governors of the Federal Reserve System as an economist, and got into the business of drafting legislation for foreign central [8] banks, first in the Philippines, and next in Ceylon (now Sri Lanka). I studied the Articles of Agreement of the International Monetary Fund carefully, and was most impressed that they tied the currencies of the member countries together through par values expressed in gold at $35 an ounce. I began to see that a fixed price for gold, and the obligation of each central bank to redeem its currency freely in gold at that price, was the kingpin of the entire international monetary system and was essential to maintaining stable exchange rates.

In both the Philippines and Ceylon I helped draft monetary laws that defined the peso and rupee in gold, and made it an obligation of the central banks to preserve the internationl values of their currencies, and to hold in their internationl reserves, for the purpose of doing so, only gold or currencies freely convertible into gold. I tried in both laws to put tight restraints on the purchase by the central banks of domestic paper assets. All to no avail. Both central banks have since bought domestic paper assets, principally the securities of their own governments, in massive amounts, especially in the 60s, 70s, and early 80s. Such expansionism produced high rates of inflation in both countries. Moreover, the Philippine peso has depreciated from 2 to the dollar, when the central bank opened in 1949, to more than 8 to the dollar today. The Sri Lankan rupee has fallen from less than 5 to the dollar, when the central bank opened in 1950, to more than 20 to the dollar today.

n. While I was still in Ceylon I had two memorable experiences.

(1) The first came even before the monetary law on which I was working was passed by Parliament. In September, 1949, the British devalued sterling and I was obliged to recommend that Ceylon, as a member of the sterling area, devalue its rupee by a like amount. The rupee had to be devalued not because of any misbehavior of the Ceylon government, or its monetary authority, but because of the misbehavior of the Bank of England which had bought sterling securities in massive amounts during and after World War II. The rupee had to be devalued because Ceylon traded heavily with other sterling area members and kept the bulk of its monetary reserves in sterling. It held no gold. In other words Ceylon suffered with other members of the sterling area because sterling was mismanaged
[9] by the Bank of England.

(2) The second came in 1953 during my third year as Governor of the Central Bank of Ceylon. It was an experience that served as an object lesson in money management for the rest of my life. A Ceylon government monopoly imported all rice and sold it to its people on a ration at a fixed price below the price of domestic rice. During the Korean War the price of imported rice rose still higher, so the loss to the government grew and a huge budget deficit developed. The Central Bank was manager of the public debt and at first helped finance the deficit by buying Ceylon government treasury bills. I found to my astonishment that as fast as the Bank bought Ceylon government treasury bills the money so created flowed out of the country and forced the Bank to sell British government treasury bills to maintain the value of the rupee. The Bank's international reserves fell alarmingly. I tried to persuade the government to raise the price of rationed rice, but failed. I then took the only action available to me. I stopped Central Bank purchases of any government securities whatsoever. Treasury bill rates began to rise sharply; prices of Ceylon government bonds began to drop. The prospect of continuously rising interest rates brought the government to heel. Overnight it almost tripled the price of rationed rice. This action produced rice riots. People were killed. The Prime Minister had a nervous breakdown. A new Prime Minister, stronger and more resolute than this predecessor, had to take over. But the loss of sterling stopped immediately and turned into a strong gain. Because of the action taken in 1953 the Central Bank was able to maintain the international value of the rupee for another fourteen years.

o. I had a comparable experience as vice president of the Federal Reserve Bank of New York in charge of international banking and gold and silver operations. In 1958 there was a recession in the United States. The Federal

Reserve, to check the recession, bought in that calendar year about $2¼ billion of United States government securities in the open market, enough to drive the treasury bill rate down to ⅝ of 1%. I considered these purchases unsound, for I saw them weakening the dollar and leading to gold losses, which they did—immediately. The balance of payments deficit soared and foreign central banks **[10]** demanded gold. To my consternation they bought $2¼ billion of it, an amount that almost exactly equaled the $2¼ billion of government securities that the Federal Reserve purchased during that same year. It fell to me to pay out the gold, more than 2,000 tons of it, for at $35 an ounce a ton of gold is worth roughly a million dollars. I told people I felt I was watching myself bleed to death.

Thus within the space of five years I had two striking examples of the consequences of central bank intervention in money markets by purchasing government securities. The consequences for money and capital flows were essentially the same in a developing country like Ceylon as in a great, industrial, developed country like the United States.

p. The message from these and many other such experiences was clear. Man cannot manage money. It is better left to manage itself. The marketplace is the master of us all, not just of all individuals and corporations, but of all governments and their central banks as well. Moreover, the market is a crime and punishment world. He who enters it and makes mistakes or commits crimes must take the consequences, whether they be favorable or unfavorable. When an individual makes a mistake in the market he is accepting the market as is: only rarely does he think he can change it. Moreover, it is he and those dependent on him who suffer the punishment for his mistakes. But when a government or its agency does so, it almost always thinks it can improve on the market. It cannot. It almost always makes the market solution worse. Moreover, it is the people who suffer from the mistaken intervention. In fact, the

politicians or bureaucrats who made the market decision may go scot free, for it is not their money that they risk, but the government's, which means the taxpayers', and even non-taxpapers'.

Intervention in money is the most pervasive, dangerous, destructive, and mischievous of all government interventions, the more so because the consequences can be so long delayed. The world suffers today the punishment from Federal Reserve interventions of decades past.

Our founding fathers were extraordinarily farsighted when they wrote in the Constitution that, "No State shall * * * make any Thing but gold and silver Coin a Tender in Payment of Debts * * *."

WHEREFORE SAYETH NOT.

/s/ John Exter
JOHN EXTER, *Affiant*

/s/ Linda C. Errante
LINDA C. ERRANTE

Notary Public of New Jersey
My Commission Expires March 9, 1986

**[11] EXHIBIT A**

**John Exter**
Consultant
Domestic and International Money

290 Boulevard
Mountain Lakes, New Jersey 07046
(201) 334-7899

John Exter is a consultant working from the above address. He is a graduate of the College of Wooster and the

Fletcher School of Law and Diplomacy and did further graduate work in economics at Harvard University. He has taught at Tufts College, Western Reserve Academy and Harvard. During World War II he served with the Radiation Laboratory at the Massachusetts Institute of Technology.

From 1945 to 1950 Mr. Exter was first an economist and later acting chief of the Far Eastern section of the Board of Governors of the Federal Reserve System. While at the Board he served first as adviser to the Secretary of Finance of the Philippines, and then to the Minister of Finance of Ceylon on the establishment of central banks. In 1950 he became the first governor of the newly organized Central Bank of Ceylon.

Three years later Mr. Exter was named division chief for the Middle East with the International Bank for Reconstruction and Development. In 1954 he was appointed a vice president of the Federal Reserve Bank of New York in charge of international banking and gold and silver operations.

In 1959 Mr. Exter joined First National City Bank as a vice president and was named a senior vice president the following year. At Citibank he was international monetary adviser for the Bank's International Banking Group with special responsibilities for relations with foreign central banks and governments. In 1972 he took early retirement to become a private consultant.

Mr. Exter is a member of the Council on Foreign Relations, the American Economic Association, and the Mont Pelerin Society. He is also a director of Limited and a trustee of the China Foundation for the Promotion of Education Culture.

Mr. Exter was born in Chicago in 1910, is married to the former Marion Hitch, has four children and lives at the above address.

**DEFENDANT'S EXHIBIT NO. 5**

**Defendant and Counter Plaintiff Richard L. Solyom's Motion to Permit the Examination of Certain Witnesses at Trial**

**Maryland-National Capital Park and Planning Commission v. Solyom, Law No. 56182 (Cir. Ct., Montgomery Cty.)**

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Law No. 56,182

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Plaintiff*

v.

RICHARD L. SOLYOM, et al., *Defendants*

RICHARD L. SOLYOM, *Counter Plaintiff*

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Counter Defendant*

**DEFENDANT AND COUNTER PLAINTIFF RICHARD L. SOLYOM'S MOTION TO PERMIT THE EXAMINATION OF CERTAIN WITNESSES AT TRIAL**

Defendant and Counter Plaintiff Richard L. Solyom, by his attorneys, Tracy E. Mulligan and Edwin Vieira, Jr., hereby moves this Court to permit him to pose the following questions, subject to objection by any other party, to the witnesses as hereinafter identified: *viz.*,

**I. Questions to Witness Margaret L. Elliott, to be Posed on Cross-Examination**

1. On p. 1 of the letter of 10 November 1981 in your *Appraisal Report and Valuation Analysis,* Exhibit —, you wrote:

> Just compensation in this appraisal is measured by the Fair Market Value. The owner whose property is being taken should be left pecuniarily whole; *i.e.,* money should be substituted for property taken or for loss in value.

When you referred to "money" being "substituted for property taken" in this case, did you mean that Mr. Solyom should receive some medium of payment for his interest in the "property taken", and that receipt of this medium of payment should transfer to him the land's fair market value?

2. Do you recognize that the problem of appraisal in this case involves two (2) elements: *viz.*, (i) ascertaining the fair **[2]** market value of Mr. Solyom's interest in the land; and (ii) determining what medium of payment will transfer this fair market value to Mr. Solyom? If not, why not?

3. In arriving at your opinion as to what the Plaintiff should pay for Mr. Solyom's interest in the land, did you take into consideration exactly what the Plaintiff intends to use as a medium of payment ("money") in this case? If so, how? If not, why not?

4. To your knowledge, what does the Plaintiff intend to use as a medium of payment ("money") in this case? How do you know?

5. In your letter of 10 November 1981 you state your opinion that the fair market value for Mr. Solyom's interest in the land is "ONE THOUSAND FOUR HUNDRED AND SIXTY-TWO DOLLARS". What "dollars" do you mean? Do you include within the term "dollars" federal-reserve notes?

6. If you were informed, as a matter of law, that the "dollar" consists of 371¼ grains of fine silver, would that change your opinion as to the fair market value of Mr. Solyom's interest in the land as expressed in "dollars"? If so, how? If not, why not?

7. In the course of your appraisal, did you make any specific inquiry to determine whether payment in federal-reserve notes, as opposed to payment in silver "dollars", would transfer fair market value to Mr.

Solyom for his interest in the land? If so, what was the methodology and result of this inquiry? If not, why did you not make such an inquiry?

8. In developing your opinion as to the fair market value for Mr. Solyom's interest in the land, did you take into account (and how did you take into account) that

a. federal-reserve notes are not gold or silver coins;

b. federal-reserve notes are not redeemable in gold or silver coins; and

c. over the past several years, there has been a serious inflation in the United States, in Maryland, and in Montgomery County, during which time the purchasing-power of federal-reserve notes in the marketplace has steadily diminished?

9. Did you make any attempt, in arriving at your opinion as to the fair market value for Mr. Solyom's interest in the land, to calculate that it would cost Mr. Solyom himself to convert a payment in federal-reserve notes into gold or silver coins? If so, did you add that figure into the fair market value? If not, why not?

10. [HYPOTHETICAL QUESTION] Assume that economic science can demonstrate that payment in federal-reserve notes for Mr. [3] Solyom's interest in the land will *not* provide him with that interest's fair market value, but that payment only in gold or silver coin would. Assume further that, in order to exchange for gold or silver coin the federal-reserve notes the Plaintiff intends to pay, Mr. Solyom would have to incur various costs over a finite period of time. If these assumptions are correct, then is not your estimate of the fair market value necessarily *less* than the true fair market value? If not, why not?

11. Assuming the facts stated in Question No. 10, *ante*, if your estimate is less than the true fair market value, how much less is it? If you do not know, can you describe the methodology you would employ to determine the difference?

**II. Questions to Witness Richard L. Solyom, to be Posed on Direct Examination**

1. Do you have any objection in principle to the Plaintiff's exercise of the State's power of eminent domain?

2. Do you have any objection to the Plaintiff's specific exercise of the State's power of eminent domain in this case? What is that objection, if any?

3. Do you have any objection to payment of the judgment in this case in federal-reserve notes? What is that objection, if any?

4. Do you have any objection to payment of the judgment in this case in gold or silver coin?

Respectfully submitted,

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(301) 622-2804

*Attorneys for Defendant and Counter Plaintiff Richard L. Solyom*

1 December 1981

## STATUTES, COURT RULES, AND CONSTITUTIONAL PROVISIONS INVOLVED

## MARYLAND CODE

*Article 66D, § 5-101(a). General powers to acquire and develop property within metropolitan district.* For the purpose of carrying out its general plans for the physical development of the metropolitan district, or any part thereof, the Commission may acquire land or other property located within the district for parks • • • by means of • • • condemnation. • • •

*Real Property, § 12-103. Time value determined.* • • • [T]he value of the property sought to be condemned • • • shall be determined • • • as of the date of trial • • •.

*Real Property, § 12-104(a). Damages to be awarded.* • • • The damages to be awarded for the taking of land is its fair market value.

*Real Property, § 12-105(b). Fair market value; assessed value.* • • • The fair market value of property in a condemnation proceeding is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would except for the property, and which a purchaser, willing but not obligated to buy, would pay • • •.

*Real Property, § 12-108(a). Payment of judgment and costs; title acquired.* • • • On payment of the judgment and costs by the plaintiff pursuant to the provisions of Subtitle U of the Maryland Rules, the plaintiff immediately shall become vested with the title, estate, or interest of the defendant in the condemned property.

## MARYLAND RULES OF PROCEDURE

*Rule U3. Procedure—Generally.* • • • [A] proceeding for condemnation shall be governed by the rules of procedure and evidence applicable to other actions at law.

*Rule U19g. Verdict—Inquisition—Form and Contents.* * * * *Award of Damages.* The inquisition shall set forth the amount of damages * * *.

*Rule U19h. Verdict—Inquisition—Form and Contents.* * * * *Other Matters.* The inquisition shall contain the findings on such other issues as, under the pleadings and evidence, the court may properly have submitted to the trier of fact for special findings.

**UNITED STATES CODE**

*12 U.S.C. § 411 (1976).* Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents * * * and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable * * * for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

*31 U.S.C. § 392 (1976).* All coins and currencies of the United States (including Federal Reserve notes * * *), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

**UNITED STATES CONSTITUTION**

*Article I, § 8, cl. 2.* The Congress shall have Power * * * To borrow Money on the credit of the United States * * *.

*Article I, § 8, cl. 5.* The Congress shall have Power * * * To coin Money, regulate the Value thereof, and of foreign Coin * * *.

*Article I, § 9, cl. 1.* The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

*Article I, § 10, cl. 1.* No State shall • • • make any Thing but gold and silver Coin a Tender in Payment of Debts • • •.

*Amendment V.* No person shall • • • be deprived of • • • property, without due process of law; nor shall private property be taken for public use without just compensation.

*Amendment VII.* In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved • • •.

*Amendment XIV.* • • • No State shall • • • deprive any person of • • • property, without due process of law • • •.

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to Rule 28 of the Rules of this Court, I have served three (3) copies of the attached Jurisdictional Statement *and* Appendix on each of the following persons, by depositing said copies in a United States post office, first-class postage prepaid, addressed as indicated below:

The Clerk
Court of Special Appeals of Maryland
Annapolis, Maryland 21401

Arthur S. Drea, Jr., General Counsel
Maryland-National Capital Park and
Planning Commission
Room 205
8787 Georgia Avenue
Silver Spring, Maryland 20907

EDWIN VIEIRA, JR., *Counsel of Record*
13877 Napa Drive
Manassas, Virginia 22110
(703) 791-6780

*Attorney for Appellant*
*Richard L. Solyom*

Done this 10th day of June, 1983.

Office-Supreme Court, U.S.
FILED
SEP 21 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-2016

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

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RICHARD L. SOLYOM, *Appellant,*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Appellee.*

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**On Appeal from the Court of Special Appeals of Maryland**

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## SUPPLEMENTAL BRIEF IN SUPPORT OF JURISDICTION

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21 September 1983

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## SUPPLEMENTAL BRIEF IN SUPPORT OF JURISDICTION

Appellee Maryland-National Capital Park and Planning Commission has filed no motion to dismiss or affirm the pending appeal herein. Thus, the Commission concedes by silence the substantiality of the constitutional question Appellant Richard L. Solyom presents to this Court, and admits by conduct its inability to present any reason why this Court should deny his prayer that the Court reverse and remand for a trial on that question.

This is not surprising. Startling, indeed, would be the converse contention—at which the Commission refrains even from hinting—that a litigant who raises

a serious constitutional issue in opposition to expropriation of his land by eminent domain is *not* entitled to a trial on that issue.

Because of the Commission's concession by silence, no legal reason exists why this Court should not note probable jurisdiction of this appeal, and set the case down for full briefing and oral argument. As a practical matter, however, the Commission's concession does support a simple *per curiam* reversal of the decision of the Court of Special Appeals of Maryland, and remand for a trial of the constitutional issues, without further time-consuming and costly proceedings before this Court. Mr. Solyom, of course, does not oppose such a resolution of the appeal.

Respectfully submitted,

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*Attorneys for Appellant*
*Richard L. Solyom*

21 September 1983

## CERTIFICATE OF SERVICE

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*Attorney for Appellant*
*Richard L. Solyom*

Done this 21st day of September, 1983.